June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to enthusiastically recommend my student, Ari Goldfine, for a clerkship in your chambers. She is one of the best students I have had the pleasure of teaching, and I was lucky enough to have her in two classes her 1L year. In addition to her intellectual gifts, she may be the biggest self- starter that I have ever taught.

She was a powerhouse participator in Contracts. I use a no-passing, rapid-fire Socratic style adapted from Professor Elizabeth Warren (my Contracts professor and her former boss) that can be intimidating for many students. Not so for Ari. Evincing careful preparation, a strong work ethic, and an uncanny ability to think on her feet, she always gave on-point answers with an insight uncommon among 1Ls. She was always able to see the lower analytical layer to the legal question and to identify important facts and the role they played in the analysis. Although I aspire to randomness in calling on students, I confess I sometimes found myself using her to get us out of a Socratic tangle (a potential risk of my teaching style). Her exam, too, reflected these strong legal analytical skills, as well as a talent for legal writing.

Her performance in Antitrust was more of the same, but this time with even more complex and technical material. She showed strong quantitative reasoning skills and superb reading comprehension, in an area of law that is particularly murky and changeable. She is intellectually nimble and curious. Her ability to see the policy behind the doctrinal intricacy set her well apart from her peers. Again, her exam was excellent.

Yet for all these considerable intellectual gifts, I would have to say that the thing that is most remarkable about Ari is how grown up and ambitious she has been in pursuing her professional aspirations. Most law students, especially 1Ls, follow the trodden path for finding summer employment. They seem to think that finding a job is bit like applying to law school—the options are more or less laid out for you by career services and you fill out some forms and hope for the best. Not Ari. She identified Antitrust—an extremely competitive area of law—as her primary professional interest and found a list of Vanderbilt Law alumni who were currently working in the field. She reached out to them to conduct informational interviews, which led one of them to contact me about my antitrust courses and he actually came to guest speak as a result of that contact! On her end, this scrappiness led to one of the most interesting jobs I've ever seen a 1L land—working at the FTC doing antitrust litigation.

For someone with these intellectual gifts, this work ethic, and this level of initiative-taking, the sky is the limit. These traits, of course, will also serve her (and you!) as a judicial clerk. She can be trusted to take initiative and go the extra mile. She is already such a professional.

Please contact me if you have any other questions about Ari's candidacy.

Sincerely,

Rebecca Allensworth
Tarkington Chair of Teaching Excellence

Rebecca Allensworth - rebecca.allensworth@law.vanderbilt.edu - 615-322-6568

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to wholeheartedly recommend Ariel (Ari) Goldfine for a judicial clerkship in your chambers. Ari was a student in my class on Networks, Platforms, and Utilities in the fall of 2022, and she helped me with a few research projects that fall as well.

In class, Ari was terrific. Networks, Platforms, and Utilities (NPUs) is a new course—a revived and refashioned version of the course called "regulated industries." In the class, we go into a deep dive into the transportation, communications, energy, finance and banking, and tech sectors. The reading was expansive (too much, honestly), and much of it complex (e.g. electricity deregulation, payment systems). Ari really stood out in class. She was obviously smart and hard working. She had clearly read all the material – and understood it well-enough to engage and explore ideas in class and during office hours with great enthusiasm. Indeed, she was so interested in the material that she is writing her third-year paper on airline points programs.

As for Ari's performance in other classes, some context may be helpful to you. Her transcript is excellent. We have a tough curve at Vanderbilt, and most faculty are pretty stingy about giving A's. The classes she took are also not the easy ones (especially mine). This also speaks to who she is: she's someone who can excel at a challenge and doesn't shy away from hard work.

Ari was also my research assistant in the fall of 2022 for a few small projects I had. She was absolutely terrific. I needed a researcher to identify organizations that were working on a few topics I'm engaging with. Ari did a terrific job. She cheerfully and carefully did the work that needed to be done, even if it wasn't the most intellectually engaging, and she was thorough in her research and found everything I could have wanted.

I should also say a few words about Ari as a person. Ari is kind and thoughtful, and easy to talk to. I think you'll find her a great person to have in your chambers on a day-to-day basis. Ari is also, as I'm sure you've gathered from her resume, someone who can get things done. She was involved in the College Democrats at Penn – during an election year in a battleground state, where part of her job was figuring out how to house hundreds of college kids coming to volunteer in the weeks before election day. Although I didn't work with her directly, she worked for the Elizabeth Warren Presidential Campaign in Nevada. Her turf was the rural parts of southern Nevada—not the most hospitable for progressives. But Ari executed on an expansive voter contact effort. At Vanderbilt, she's been active in the Legal Aid Society as well, particularly in connecting our students to alums who work in legal services.

In short, from my experiences with Ari, I believe she would be an ideal clerk. She is willing and able to do the necessary, routine work cheerfully and carefully. She is smart, hard-working, engaging, and curious. And she's kind and a fun person to talk to. You will be able to rely on her and can trust she'll get it right.

I recommend Ari Goldfine as highly as possible for a clerkship in your chambers. If there is anything more I can tell you, feel free to contact me by email at ganesh.sitaraman@vanderbilt.edu.

Sincerely,

Ganesh Sitaraman
New York Chancellor's Chair in Law
Vanderbilt Law School

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write with great enthusiasm to recommend Ariel (Ari) Goldfine for a clerkship in your chambers. In my view, Ari is on course to be one of the strongest clerkship candidates graduating in her class at Vanderbilt. Ari's performance in my 1L class, which I describe below, was outstanding. She was similarly strong in her second year in my Administrative Law class. She has earned a position on the Vanderbilt Law Review and is actively involved in the life of the School.

Ari was my student in the spring semester her 1L year (spring 2022) in a required course on statutory interpretation and the administrative process (which we call Regulatory State). I could have predicted from early on in class that she would rise to the top. In a large section, her performance stood out in several important respects. First, she was the student who would enter the fray to ask a truly probing question or to put her finger right on the most complex issue. She is a student who sees difficulty issues and is able to clearly articulate the balance of considerations on either side of the issue. When other students were struggling in class, I would frequently turn to Ari to move the conversation forward. Her ability to think clearly and logically as well as her impressive oral skills would be immediately apparent to you in an interview.

Second, and just as important for a clerkship, she writes fluidly, carefully, and with polish. Perhaps a credit to her undergraduate education at the University of Pennsylvania and her writing for the Daily Pennsylvania, I have seen few students who entered law school with an intuitive sense of how to approach writing about legal matters. In my midterm written assignment, which involved an issue of statutory interpretation, Ari not only saw all the issues, but she also knit them together into a coherent analysis that I would feel very comfortable sharing with my colleagues as an example as the best student writing in my class. Indeed, I selected her answer as part of the model answer that I distributed to class as a whole. I was not surprised at all to see that Ari's final grade, building in her final exam, was at the very top of the class. For the intense writing demands of a clerkship, I am confident that Ari would be a quick starter, producing excellent work while also working hard through multiple rounds of edits. My impressions of Ari's talents were reinforced this past semester (Fall 2022) when she was a student in my Administrative Law class. I think the class is a great proxy for the doctrinal skills necessary for law clerks, and again Ari was a standout, earning one of the highest grades in a class full of students from Law Review.

Ari has her sights on a career in litigation, and I can easily imagine a career in which she is back-and-forth between working for the federal government, at the Department of Justice or in the General Counsel's office of an agency, and a firm. She has the breadth of talent, excellent judgment, and legal skills to excel in both of those demanding environments.

At a personal level, Ari is very impressive. She immediately struck me as both very sharp and very sensible—a great combination for a future litigator. She is also friendly and easy to engage. Having clerked at both the federal district court (SDNY) and federal appeals court (Ninth Circuit), I fondly remember the small-office environment of judicial chambers and think Ari would fit in well to any chamber's environment.

In sum, I think Ari is on a tremendous trajectory. I see great upsides to her as a clerk who would produce outstanding work, appropriately seek out feedback, and be a pleasure to have around chambers. I see no downsides. Please do not hesitate to call or email me if you have any questions about Ari. I can be reached easily by email, kevin.stack@vanderbilt.edu.

Yours sincerely,

Kevin M. Stack

Kevin Stack - kevin.stack@vanderbilt.edu - 615-343-9220

ARI GOLDFINE
819 18th Avenue S., Nashville, TN 37203
(602) 380- 2531
Ariel.s.goldfine@vanderbilt.edu

WRITING SAMPLE

The attached writing sample is an excerpt of a memorandum I submitted as part of Vanderbilt's legal writing course. The assignment provided students with various court documents, including the plaintiff's complaint, various depositions, and the defendant's reply. The assignment instructed students to compose a motion for partial summary judgment on behalf of the defendant in response to the plaintiff's claim of gender discrimination.

This writing sample is an excerpted portion of a twenty-page memorandum. In this excerpt, I have included a simplified and condensed statement of facts. Additionally, while the full memorandum addressed the plaintiff's allegation of gender discrimination based in both direct and indirect evidence, this excerpt only addresses the indirect evidence-based argument. Accordingly, the argument section starts with "B," and the introduction and conclusion reference portions of the argument not included in this excerpt.

No third party edited this excerpt. I drafted this sample in March 2022.

INTRODUCTION

Defendant WGCX-JAX moves for partial summary judgment against Plaintiff Selena Kile's claim that WGCX-JAX committed gender discrimination in violation of Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-2(a)(1); Fed. R. Civ. P. 56. WGCX-JAX is entitled to summary judgment because there is no genuine dispute of material fact; Ms. Kile failed to establish the prima facie case of gender discrimination using either indirect or direct evidence. Fed. R. Civ. P. 56; see McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1359 (11th Cir. 1999).

STATEMENT OF FACTS

WGCX-JAX, Inc. ("WGCX") is a television station in Jacksonville, Florida, that produces news and entertainment programming. (Compl. 2.) WGCX's programming includes Wake Up Jacksonville, Noon News, Six O'clock News, and Eleven O'clock News. (Compl. 2.) Mr. Albert Penningsworth ("Mr. Penningsworth") has been the President and General Manager of WGCX since 2013. (Penningsworth Decl. ¶ 1.)

Plaintiff Selena Kile ("Ms. Kile") is a former television news anchor at WGCX. (Kile Dep. 1.) She joined WGCX in 1993 and became an anchor for Wake Up Jacksonville and Noon News in 1995. (Kile Dep. 1.) In 2000, she became an anchor for Six O'clock News and Eleven O'clock News, where she remained until July 31, 2020. (Kile Dep. 1.) WGCX then moved the Plaintiff to anchor Wake Up Jacksonville and Noon News, where she remained until her termination on October 1, 2020. (Kile Dep. Ex. A.)

In July 2019, Mr. Penningsworth hired Mr. Zachary Napier ("Mr. Napier") as WGCX's station manager, a position that granted Mr. Napier hiring and firing responsibilities. (Penningsworth Decl. ¶ 9.) In his role, Mr. Napier determined that WGCX required revitalization and increased on-air energy. (Napier Dep. 2.) To achieve this, Mr. Napier hired River City Consultants in August 2019 to evaluate room for growth in on-air programming. (Napier Dep. 4.) River City Consultants began surveying viewers and tracking ratings in October 2019 and issued their final report to Mr. Napier and Mr. Penningsworth on March 23, 2020. (Napier Dep. 4.) The report provided favorability rankings for all seven anchors at WGCX and ranked Ms. Kile at 5th overall (Ex. B.)

In response to the final report, Mr. Napier issued aesthetic improvement plans for all on air talent, regardless of favorability ranking. (Napier Dep. 4.) For example, he required that Mr. Robin Grayson ("Mr. Grayson") improve his wardrobe, that Mr. Bruce Wane ("Mr. Wane") undergo vocal training, and that Mr. Jones Greenhill ("Mr. Greenhill") remove his facial hair. (Napier Dep. 4.) Mr. Napier also required Mr. Emmett Pratt ("Mr. Pratt") lose fifty pounds over a year. (Napier Dep. 4.) There is no allegation that any of these anchors refused to participate with these aesthetic improvement plans.

Mr. Napier also issued an improvement plan for the Plaintiff, which required her to collaborate with hair, makeup, and clothing consultants, as well as with a vocal coach and a personal trainer. (Napier Dep. 5.) Mr. Napier also recommended the Plaintiff explore plastic surgery, which she refused outright. (Napier Dep. 5; Kile Dep. 3.)

Beyond the plastic surgery, the Plaintiff also refused to cooperate with the majority of her other consultants and did not fully participate in the improvement plan. (Kile Dep. 3.) For example, the hair consultant recommended the Plaintiff grow her hair longer. (Kile Dep. 3.)

When the Plaintiff resisted, claiming that short hair was easier to care for, the consultant recommended she wear either extensions or a wig; she refused both alternatives. (Kile Dep. 3.) Additionally, the makeup consultant recommended the Plaintiff wear brighter blush and lipstick while on camera; the Plaintiff refused. (Kile Dep. 3.) The Plaintiff also refused to cooperate with the clothing recommendations from the wardrobe consultant. (Kile Dep. 3.) Finally, the vocal coach encouraged the Plaintiff to speak with "more expression" to "sound more energetic." (Kile Dep. 4.) The Plaintiff resisted somewhat, believing that a monotone voice was "more comforting to viewers." (Kile Dep. 4.)

The Plaintiff's cooperation ceased altogether following an incident at the July 4th company picnic. (Kile Dep. 4.) The Plaintiff overheard other anchors, including Mr. Wane and Ms. Haley Quint ("Ms. Quint"), speaking disparagingly about her. (Kile Dep. 4.) The Plaintiff also overhead Mr. Napier refer to her as "an old cow." (Kile Dep. 4.) After this incident, the Plaintiff communicated her anger to Mr. Napier, threatening that she would no longer cooperate with any of the consultants. (Kile Dep. 4; Napier Dep. 6.)

After the picnic, Ms. Kile persisted in her refusal to cooperate with any element of the aesthetic improvement plans. (Napier Dep. 6; Kile Dep. 4.) In response to this persistent refusal to cooperate, the station terminated the Plaintiff's employment as an anchor in October 2020. (Napier Dep. 6; Kile Dep. Ex. A.)

ARGUMENT

B. Because Ms. Kile failed to demonstrate that she and similarly situated male anchors received arbitrarily disparate treatment, she cannot establish the prima facie case of gender discrimination using indirect evidence.

Unless a plaintiff can establish that her employer treated similarly situated male employees favorably, she cannot establish the prima facie case of gender discrimination using

indirect evidence. McDonnell Douglas, 411 U.S. at 802; see Lewis, 918 F.3d at 1214. In order to establish this disparate treatment, the plaintiff must identify male comparators who are similarly situated in all material respects. Lewis, 918 F.3d at 1216. Unless the plaintiff can establish that she and a similarly situated male comparator received arbitrarily disparate treatment, she cannot establish the inference of gender discrimination. Id.; see McDonnell Douglas, 411 U.S. at 802.

Ms. Kile did not establish the prima facie case of gender discrimination using indirect evidence. (Kile Dep. 3; Napier Dep. 5.); see McDonnell Douglas, 411 U.S. at 802. Unlike WGCX's male anchors, Ms. Kile violated company policy, meaning she and the male anchors were not similarly situated in all material respects. (Kile Dep. 3; Napier Dep. 5.); see Lewis, 918 F.3d at 1216; McDonnell Douglas, 411 U.S. at 802. As a result, Ms. Kile cannot establish the inference that WGCX treated the male anchors favorably on the basis of gender; she therefore cannot establish a prima facie case of gender discrimination using indirect evidence. (Napier Dep. 5.); see Lewis, 918 F.3d at 1216.

1. Unless a plaintiff can identify a similarly situated male employee who received preferential treatment, she cannot establish the prima facie case of gender discrimination using indirect evidence.

If the plaintiff cannot establish all four elements of the prima facie case delineated in McDonnell Douglas, her gender discrimination claim based on indirect evidence cannot survive a motion for summary judgment; this requires the plaintiff identify a male comparator who received arbitrarily preferable treatment. 411 U.S. at 802; Lewis, 918 F.3d at 1216. In Lewis, the court held that a black female police officer did not establish the prima facie case of her gender discrimination claim against the police force. 918 F.3d at 1216. Prior to her termination, Ms. Lewis suffered a heart attack, and her physician deemed it unsafe for her to handle or be proximate to tasers. Id. This recommendation precluded the plaintiff from participating in

requisite weapons training, leading the police department to terminate her employment. Id. at 1219. Ms. Lewis brought a suit against the department, alleging discrimination on the basis of gender and race. Id. The court held that she failed to show that her supervisor treated similarly situated white or male comparators more favorably. Id. As a result, she failed the McDonnell Douglas test and could not survive a motion for summary judgment. Lewis, 918 F.3d at 1225; McDonnell Douglas, 411 U.S. at 802.

Unless a plaintiff can identify male comparators who are similarly situated in all material respects, she cannot demonstrate the inference of arbitrarily disparate treatment, and therefore cannot establish the prima facie case of gender discrimination using indirect evidence. Lewis, 918 F.3d at 1216. In Lewis, the proffered comparators were two white, male police officers who failed the police department's physical fitness test; the department did not fire either officer. Id. at 1219. However, unlike the plaintiff, their deviations from physical fitness standards were not permanent. Id. Ms. Lewis's condition permanently barred her from being near tasers. Id. By contrast, the proposed comparators failed physical-fitness benchmarks due to non-chronic conditions that they could improve. Id. The court held that these differences in conduct were material, and as a result, the two white, male police officers were inappropriate comparators. Id. at 1229. Accordingly, the plaintiff was unable to establish the inference of disparate treatment on the basis of race or gender, meaning she failed to establish a prima facie case of unlawful discrimination using indirect evidence. Id; McDonnell Douglas, 411 U.S. at 802.

In Lathem, the court held that the plaintiff identified an adequate comparator, and the plaintiff successfully established a prima facie case of employment discrimination using indirect evidence. Lathem v. Dep't of Child. & Youth Servs., 172 F.3d 786, 788 (11th Cir. 1999). Ms.

Rhonda Lathem ("Ms. Lathem"), an employee of the Department of Children and Youth Services ("DCYS"), formed a personal relationship with her clients, allowing them to stay at her home. Id at 790. This violated DCYS policy; Ms. Lathem's supervisor terminated her employment. Id. Ms. Lathem brought a suit alleging gender discrimination, identifying Mr. Larry Smith ("Mr. Smith"), a male DCYS employee, as a comparator. Id. DCYS did not terminate Mr. Smith's employment, despite knowing he maintained an unlawful sexual relationship with an underage DCYS client. Id. The court held Mr. Smith was an appropriate comparator because Ms. Lathem and Mr. Smith both violated the same DCYS policy and were therefore similarly situated in all material respects. Id. at 793. Because Mr. Smith was an appropriate comparator, Ms. Lathem could point to their arbitrarily disparate treatment to infer gender discrimination. Id.

2. Because Ms. Kile's male co-anchors complied with company policy and Ms. Kile did not, she cannot use their differences in employment outcomes to establish the prima facie case of gender discrimination using indirect evidence.

Ms. Kile cannot fulfill the requisite elements under the McDonnell Douglas test because she cannot demonstrate that WGCX treated male anchors preferably; the station subjected all of its male and female anchors to an improvement plan, meaning the aesthetic consultations were not an adverse employment action applied to women alone. (Napier Dep. 5.); see 411 U.S. at 802; Lewis, 918 F.3d at 1216. The station's attempt to update Ms. Kile's appearance was not unique to her. (Napier Dep. 5.) The station also sought aesthetic updates to the male anchors' appearances, requiring Mr. Greenhill remove his beard, Mr. Grayson update his wardrobe, and

Mr. Pratt lose fifty pounds in one year. (Napier Dep. 5.) Like the weapons' policy in Lewis, these aesthetic requirements applied universally to all relevant employees. (Napier Dep. 5.); see 918 F.3d at 1219.

Because WGCX's male anchors cooperated with the aesthetic improvement plans and Ms. Kile did not, the male anchors were not similarly situated to Ms. Kile in all material respects. (Napier Dep. 5; Kile Dep. 3.); see Lewis, 918 F.3d at 1216. In Lewis, the court held that the white, male police officers' temporary disqualifications from physical readiness were materially distinct from Ms. Lewis's disability. 918 F.3d at 1229. Ms. Lewis's disability permanently barred her from engaging in taser training; her male co-workers were temporarily physically unfit. Id. This material distinction precluded the white, male police officers from constituting adequate comparators. Id. Similarly, Ms. Kile's behavior is materially distinct from the male anchors' behavior because she alone refused to cooperate with the station's aesthetic improvement plans. (Napier Dep. 5.); see Lewis, 918 F.3d at 1229. By contrast, the male anchors complied with the aesthetic consultations. (Napier Dep. 5.); see Lewis, 918 F.3d at 1229. These differences in behavior, like those between Ms. Lewis and her proffered comparators, are sufficiently material, precluding the male anchors from constituting Ms. Kile's comparators. (Napier Dep. 5.); see Lewis, 918 F.3d at 1229.

In Lathem, the plaintiff successfully identified a similarly situated male comparator who received preferential treatment and was able to establish a prima facie case of gender discrimination using indirect evidence; this is distinguishable from the facts of Ms. Kile's complaint, which failed to identify adequate male comparators. 172 F.3d at 793. In Lathem, DCYS subjected both the plaintiff and her comparator to the same policy, which both the plaintiff and her male comparator violated. Id. at 790. Thus, she and the male co-worker were

similarly situated in all material respects, save the difference in gender. Id. at 793. By contrast, in response to a universally applied initiative, Ms. Kile did not cooperate; her male co-anchors did cooperate. (Kile Dep. 4; Napier Dep. 4.); see, Lathem 172 F.3d at 793. Accordingly, they were not similarly situated in all material respects, and Ms. Kile cannot point to their disparate employment outcomes to establish the inference of gender discrimination using indirect evidence. (Kile Dep. 4; Napier Dep. 4.); see Lathem, 172 F.3d at 793.

CONCLUSION

WGCX is entitled to partial summary judgment against Ms. Kile's claim that WGCX committed gender discrimination in violation of Title VII of the Civil Rights Act of 1964. There is no genuine dispute of material fact, and Ms. Kile failed to establish the prima facie case of gender discrimination using either indirect or direct evidence. Accordingly, her claim of gender discrimination should not survive this motion for summary judgment.

Applicant Details

First Name	**Johan**
Last Name	**Gonzalez**
Citizenship Status	**U. S. Citizen**
Email Address	**Johan.h.gonzalez@gmail.com**
Address	**Address** Street **5135 S Drexel Ave, Apt 3A** City **Chicago** State/Territory **Illinois** Zip **60615** Country **United States**
Contact Phone Number	**8455050076**

Applicant Education

BA/BS From	**Northeastern University**
Date of BA/BS	**May 2018**
JD/LLB From	**The University of Chicago Law School** **https://www.law.uchicago.edu/**
Date of JD/LLB	**June 3, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Legal Forum**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations	**Just the Beginning**

Recommenders

Stone, Geof
gstone@uchicago.edu
Rappaport, John
jrappaport@uchicago.edu
773-834-7194
Hallett, Nicole
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Johan Gonzalez

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June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street,
Norfolk, VA 23510

Dear Judge Walker,

I am a recent graduate of the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024–2025 term. In the meantime, I will be working for Ropes & Gray, LLP in the litigation practice of their Boston office. As an aspiring trial litigator, I am interested in clerking for the opportunity to learn about motion practice and advocacy in the district court. On a personal level, I am excited by the prospect of being mentored by someone who has traversed a career path that aligns closely with my aspirations.

As a first-generation immigrant with extensive litigation experience, I believe that my unique perspective and experiences would make me a valuable addition to your chambers. From a young age, I was responsible for helping my parents navigate the complexities of our administrative state, from working with USCIS to become citizens to working with the New York State Education Department to ensure that my sister with Down Syndrome received the services she required. These experiences subconsciously pushed me towards a career in law and public service, and my latter professional experiences at the U.S. Attorney's Office, the Massachusetts Attorney General's Office, and the U.S. Department of Justice further led me to seek a clerkship.

If selected, I will bring a tireless work ethic and passion for public service. While completing my undergraduate degree, I began working as an investigator for the Medicaid Fraud Division of the MA Attorney General's Office, where I continued to work through the first two quarters of law school. I conducted complex data analyses and legal research into state regulations; interviewed witnesses, victims, and targets; and synthesized my findings into legal memoranda. I handled approximately twenty cases at any given time, including several cases that resulted in indictments and two that went to trial. During my first six months of law school, I helped settle five cases for approximately seven million dollars.

I have consistently demonstrated throughout my career that I can work well under intense pressure and have strong research and writing skills that I continue to hone. As a summer associate at Ropes & Gray, I worked on various client and pro bono matters that required extensive research, drafting memoranda, providing translation services, and conducting interviews, all while participating in firm-wide events and the firm's softball league. During my third year, I effectively balanced the competing time-intensive demands of being a student attorney for the Immigrants' Rights Clinic and serving as a Comments Editor for the *University of Chicago Legal Forum*. As a 3L student attorney, I worked over 350 hours, drafted a claims memorandum on complicated issues related to 18 U.S.C. § 1983, drafted and filed a complaint, and submitted a humanitarian parole application.

My resume, transcript, and writing sample are enclosed. Letters from Professors Nicole Hallett, John Rappaport, and Geoffrey Stone will arrive separately. Should you require additional information, please do not hesitate to let me know. Thank you for your time and consideration.

Sincerely,
/s/ Johan Gonzalez
Johan Gonzalez

Johan Gonzalez

5135 South Drexel Avenue #3A, Chicago, IL 60615 • Cell: 845-505-0076 • Jhgonzalez@uchicago.edu

EDUCATION:

The University of Chicago Law School, Chicago, IL
Juris Doctor, June 2023

- *Journal: The University of Chicago Legal Forum,* Comment Editor
- *Activities:* Latinx Law Student Association; First Generation Professionals, 3L Representative; Antitrust Law Association, Treasurer, Events Coordinator
- *Honors:* Dean's Certificate of Recognition for Pro Bono Service

Northeastern University, Boston, MA
Bachelor of Science, *Magna Cum Laude,* in Criminal Justice and Political Science, English Minor, May 2018

- *Honors: Alpha Phi Sigma* Criminal Justice Honor Society, *Pi Sigma Alpha* Political Science Honor Society, *Alpha Kappa Sigma* Scholarship, Hetler R. McKenzie Scholarship, *Phi Theta Kappa* Honors Society Scholarship

EXPERIENCE:

Edwin F. Mandel Legal Aid Clinic, Immigrants' Rights Clinic, Chicago, IL
Student Attorney, September 2022 – May 2023

- Researched legal issues and drafted related memoranda on 18 U.S.C.§ 1983, fourth amendment violations and Illinois state torts
- Drafted and filed a complaint in the Northern District of Illinois
- Prepared humanitarian parole applications
- Conducted interviews with Spanish-speaking clients and provided translation services

Ropes & Gray, Boston, MA
Litigation Summer Associate May 2022 – August 2022
Litigation Associate October 2023

- Researched legal issues and drafted related memoranda and motions on a variety of topics, such as the SEC's approach to ESG funds, and crimes of moral turpitude
- Assisted in Spanish-speaking client interviews by translating interview outlines, interpreter services, and translating engagement letters
- Provided attorneys with a weekly update on bankruptcy matters across the world

United States Department of Justice, Washington, DC
Antitrust Division Legal Intern, June 2021 – August 2021

- Research legal issues and draft related memoranda on a variety of topics, including the extraterritorial application of wire fraud and conspiracy to defraud the United States
- Cooperate with attorneys and paralegals in conducting legal research and preparing for criminal trials
- Participate in witness interviews and in case strategy sessions

Massachusetts Attorney General's Office, Boston, MA
Medicaid Fraud Division Investigator, August 2018 – March 2021
Medicaid Fraud Division Assistant Investigator, January 2017 – July 2018

- Investigated allegations of fraud, drug diversion, and patient abuse and neglect within the state's Medicaid program by analyzing complex data to determine potential fraudulent patterns of billing and conducting victim interviews
- Produced opening and closing memoranda, administrative demand letters, and subpoenas
- Worked on two criminal trial teams, interviewing witnesses in preparation for trial and testified in front of a jury
- Co-led an investigation with OIG, USAO, and IRS that concluded with the indictment of three individuals on counts of health care fraud, tax evasion, identity fraud, and tax evasion

United States Attorney's Office, Boston, MA
Economic Crimes Unit Legal Support Intern, January 2016 – July 2016

- Cooperated with Assistant U.S. Attorneys and paralegals in conducting legal research and preparing for trial
- Assisted in document management and review, including discovery production and case closings
- Audited bank records for potential fraud such as Ponzi and Pyramid schemes

LANGUAGES/ COMMUNITY SERVICES

- Native Spanish Speaker
- Intermediate German
- Project Citizenship, *Volunteer*, 2022
- Boston Homeless Shelter, *Volunteer*, 2016 – 2018
- Bikes Not Bombs, *Volunteer*, 2016 – 2017

THE UNIVERSITY OF CHICAGO

Name: Johan H. Gonzalez
Student ID: 12276052

University of Chicago Law School

Degrees Awarded

Degree: Doctor of Law
Confer Date: 06/03/2023
Degree GPA: 176.940
J.D. in Law

Academic Program History

Program: Law School
Start Quarter: Autumn 2020
Current Status: Completed Program
J.D. in Law

External Education

Northeastern University
Boston, Massachusetts
Bachelor of Science 2018

Beginning of Law School Record

Autumn 2020

Course		Description	Attempted	Earned	Grade
LAWS	30101	Elements of the Law Richard Mcadams	3	3	173
LAWS	30211	Civil Procedure William Hubbard	4	4	173
LAWS	30611	Torts Daniel Hemel	4	4	179
LAWS	30711	Legal Research and Writing Elizabeth Anne Reese	1	1	176

Winter 2021

Course		Description	Attempted	Earned	Grade
LAWS	30311	Criminal Law John Rappaport	4	4	177
LAWS	30411	Property Lee Fennell	4	4	174
LAWS	30511	Contracts Bridget Fahey	4	4	173
LAWS	30711	Legal Research and Writing Elizabeth Anne Reese	1	1	176

Spring 2021

Course		Description	Attempted	Earned	Grade
LAWS	30712	Legal Research, Writing, and Advocacy Elizabeth Anne Reese	2	2	178
LAWS	30713	Transactional Lawyering Douglas Baird	3	3	177
LAWS	44201	Legislation and Statutory Interpretation Ryan Doerfler	3	3	177
LAWS	47201	Criminal Procedure I: The Investigative Process John Rappaport	3	3	179
LAWS	47301	Criminal Procedure II: From Bail to Jail Alison Siegler	3	3	175

Summer 2021

Honors/Awards
The University of Chicago Legal Forum, Staff Member 2021-22

Autumn 2021

Course		Description	Attempted	Earned	Grade
LAWS	42401	Securities Regulation M. Todd Henderson	3	3	177
LAWS	42801	Antitrust Law Randal Picker	3	3	173
LAWS	43282	Energy Law Joshua C. Macey	3	3	173
LAWS	53445	Advanced Criminal Law: Evolving Doctrines in White Collar Litigation Thomas Kirsch	3	3	179
LAWS	94120	The University of Chicago Legal Forum Anthony Casey	1	1	P

Winter 2022

Course		Description	Attempted	Earned	Grade
LAWS	43292	The Law of Police Richard Mcadams	3	3	177
LAWS	46101	Administrative Law David A Strauss	3	3	177
LAWS	53132	Human Trafficking and the link to Public Corruption Req Designation: Meets Writing Project Requirement Virginia Kendall	3	3	180
LAWS	53497	Editing and Advocacy Patrick Barry	2	2	P
LAWS	94120	The University of Chicago Legal Forum Anthony Casey	1	1	P

THE UNIVERSITY OF CHICAGO

Name: Johan H. Gonzalez
Student ID: 12276052

University of Chicago Law School

Spring 2022

Course		Description	Attempted	Earned	Grade
LAWS	40201	Constitutional Law II: Freedom of Speech Geoffrey Stone	3	3	177
LAWS	41601	Evidence Emily Buss	3	3	177
LAWS	53404	The Role and Practice of the State Attorney General Michael Scodro Lisa Madigan	3	3	180
LAWS	94120	The University of Chicago Legal Forum	1	1	P
Req Designation:		Meets Substantial Research Paper Requirement Anthony Casey			

Honors/Awards
Completed Pro Bono Service Initiative

End of University of Chicago Law School

Summer 2022

Honors/Awards
The University of Chicago Legal Forum, Comment Editor 2022-23

Autumn 2022

Course		Description	Attempted	Earned	Grade
LAWS	43200	Immigration Law Amber Hallett	3	3	177
LAWS	43284	Professional Responsibility and the Legal Profession Anna-Maria Marshall	3	3	177
LAWS	81009	Intensive Trial Practice Workshop Herschella Conyers Erica Zunkel Judith Miller Craig Futterman Jorge Alonso	3	3	177
LAWS	90211	Immigrants' Rights Clinic Amber Hallett	3	3	179

Winter 2023

Course		Description	Attempted	Earned	Grade
LAWS	40301	Constitutional Law III: Equal Protection and Substantive Due Process Geoffrey Stone	3	3	179
LAWS	41101	Federal Courts Alison LaCroix	3	3	179
LAWS	53264	Advanced Legal Research Scott Vanderlin	2	2	177
LAWS	90211	Immigrants' Rights Clinic Amber Hallett	3	3	179

Spring 2023

Course		Description	Attempted	Earned	Grade
LAWS	43253	Regulation of Banks and Financial Institutions Adriana Robertson	3	3	177
LAWS	81123	Negotiation Jesse Ruiz	3	3	181
LAWS	90211	Immigrants' Rights Clinic Amber Hallett	3	3	179

Date Issued: 06/10/2023


THE UNIVERSITY OF
CHICAGO

NORTHEASTERN UNIVERSITY

Northeastern

Office of the University Registrar
230-271
360 Huntington Avenue
Boston, MA 02115-5000
email: transcripts@northeastern.edu web: http://www.northeastern.edu/registrar/

Record of: Johan H Gonzalez NUID: 001973021
Issued To: Johan Gonzalez
Johan Gonzalez
Johan.H.Gonzalez@Gmail.com
Student email:
Gonzalez.j@husky.neu.edu

Primary Program
Bachelor of Science
College : College of Social Sciences and Humanities
Major : Criminal Justice/Political Sci
Minor : English

Degree Awarded Bachelor of Science 04-MAY-2018
Primary Degree
College : College of Social Sciences and Humanities
Major : Criminal Justice/Political Sci
Minor : English

Inst. Honors: magna cum laude

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:			
TransferFrom	Dutchess Cmty College		
CHEM 1990	Elective	4.00 T	
COMM 1990	Elective	3.00 T	
ECON 1101	Econ Problems & Perspectives	3.00 T	
ENGL 2300	Introduction to Shakespeare	3.00 T	
ENGL 3380	Topics in Writing	3.00 T	
ENGW 1111	First-Year Writing	6.00 T	
GRMN 2990	Elective	3.00 T	
HIST 1990	Elective	3.00 T	
HIST 1990	Elective	3.00 T	
IDSC 3448	Topics in Interdisc Studies	3.00 T	
MATH 1341	Calculus 1 for Sci/Engr	4.00 T	
NRSG 1205	Wellness	3.00 T	
PHIL 1114	Reason, Risk, and Evidence	3.00 T	
PHYS 1111	Astronomy	4.00 T	
POLS 4910	Model United Nations	4.00 T	
PSYC 1101	Foundations of Psychology	3.00 T	
Ehrs: 55.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

INSTITUTION CREDIT:
********** CONTINUED ON NEXT COLUMN **********

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Institution Information continued:			
Spring 2015 Semester			
CRIM 1100	Intro to Criminal Justice	4.00 A-	14.668
POLS 1150	American Government	4.00 B+	13.332
POLS 1160	International Relations	4.00 A-	14.668
POLS 2400	Quantitative Techniques	4.00 A-	14.668
Ehrs:16.000 GPA-Hrs: 16.000 QPts: 57.336 GPA: 3.584			
Dean's List			
Fall 2015 Semester			
CRIM 2000	Co-op Integration Seminar I	1.00 A	4.000
CRIM 2200	Criminology	4.00 A	16.000
CRIM 3040	Psychology of Crime	4.00 B+	13.332
POLS 2333	Politics and Film	4.00 A	16.000
POLS 3470	Arab-Israeli Conflict	4.00 B	12.000
Ehrs:17.000 GPA-Hrs: 17.000 QPts: 61.332 GPA: 3.608			
Dean's List			
Spring 2016 Semester			
COOP 3945	Co-op Work Experience	0.00 S	0.000
Ehrs: 0.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			
Summer 1 2016 Semester			
COOP 3945	Co-op Work Experience	0.00 S	0.000
Ehrs: 0.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			
Summer 2 2016 Semester			
ENGW 3315	Interdisciplinary Adv Writing	4.00 A-	14.668
POLS 4947	Campaign & Elections Practicum	4.00 A	16.000
Ehrs: 8.000 GPA-Hrs: 8.000 QPts: 30.668 GPA: 3.834			
Fall 2016 Semester			
CRIM 1300	The Death Penalty	4.00 A	16.000
CRIM 3000	Co-op Integration Seminar 2	1.00 A	4.000

********** CONTINUED ON PAGE 2 **********

Linda Allen

Linda Allen Asst. VP and University Registrar

From Northeastern University to Johan.H.Gonzalez@Gmail.com on 10/30/2019 01:03 PM TRAN0000018038631

NORTHEASTERN UNIVERSITY

Northeastern

Office of the University Registrar
230-271
360 Huntington Avenue
Boston, MA 02115-5000
email: transcripts@northeastern.edu web: http://www.northeastern.edu/registrar/

Record of: Johan H Gonzalez NUID: 001973021

SUBJ NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:					
CS 1100	CS & Its Applications	4.00	A	16.000	
POLS 1155	Comparative Politics	4.00	A	16.000	
POLS 2399	Research Methods	4.00	A-	14.668	
Ehrs:17.000 GPA-Hrs: 17.000 QPts: 66.668 GPA: 3.922					
Dean's List					
Spring 2017 Semester					
COOP 3945	Co-op Work Experience	0.00	S	0.000	
Ehrs: 0.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000					
Summer 1 2017 Semester					
COOP 3945	Co-op Work Experience	0.00	S	0.000	
Ehrs: 0.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000					
Summer 2 2017 Semester					
CRIM 4040	Crime Prevention	4.00	A	16.000	
ENGL 3380	Topics in Writing	4.00	A	16.000	I
Ehrs: 8.000 GPA-Hrs: 8.000 QPts: 32.000 GPA: 4.000					
Fall 2017 Semester					
CRIM 2100	Criminal Due Process	4.00	A	16.000	
ENGL 3720	Major Figure: Poe	4.00	B+	13.332	
POLS 2332	Contemporary Political Thought	4.00	A-	14.668	
POLS 4505	U.S. Civil Liberties	4.00	B+	13.332	
Ehrs:16.000 GPA-Hrs: 16.000 QPts: 57.332 GPA: 3.583					
Dean's List					
Spring 2018 Semester					
CRIM 3010	Criminal Violence	4.00	A	16.000	
CRIM 4120	Courts and Sentencing	4.00	A	16.000	
ENGL 4992	Directed Study	2.00	A	8.000	
POLS 4701	Political Science Sr Capstone	4.00	A	16.000	
Ehrs:14.000 GPA-Hrs: 14.000 QPts: 56.000 GPA: 4.000					

********** CONTINUED ON NEXT COLUMN **********

******* END OF STUDENT ******

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	96.000	96.000	361.336	3.764
TOTAL TRANSFER	55.000	0.000	0.000	0.000
OVERALL	151.000	96.000	361.336	3.764

********** END OF TRANSCRIPT **********

Linda Allen

Linda Allen Asst. VP and University Registrar

From Northeastern University to Johan.H.Gonzalez@Gmail.com on 10/30/2019 01:03 PM TRAN0000018038631

Northeastern University, Office of the Registrar
271 Huntington Ave.
Boston, MA 02115

SCALE OF GRADES AND COMMENTS TO ACCOMPANY TRANSCRIPTS

Effective Fall 2016: College of Professional Studies undergraduate programs converted from a quarter system to a semester system. For student records including hours earned prior to fall 2016, the credit hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is now equivalent to a 3-credit semester course.

Effective Fall 2009: Northeastern University converted its Student Information System. All courses and Programs were converted.

Northeastern University Course Numbering

UNDERGRADUATE

Orientation and Basic	**0001-0999**
No degree credit	
Introductory Level (First year)	**1000-1999**
Survey, Foundation and Introductory courses normally with no prerequisites and designed primarily for students with no prior background	
Intermediate Level (Sophomore/Junior year)	**2000-2999**
Normally designed for sophomores and above, but in some cases open to freshman majors in the department.	
Upper Intermediate Level (Junior year)	**3000-3999**
Designed primarily as courses for juniors. Pre-requisites are normally required and these courses are pre-requisites for advanced courses.	
Advanced Level (Senior year)	**4000-4999**
Designed primarily for juniors and seniors, or specialized courses. Includes research, capstone and thesis.	

GRADUATE

Orientation and Basic	**0001-0999**
No degree credit	
1st level graduate	**5000-5999**
Courses primarily for graduate students and qualified undergraduate students with permission	
2nd level graduate	**6000-6999**
Generally for Master's only and Clinical Doctorate	
3rd level graduate	**7000-7999**
Master's and Doctoral level classes. Includes Master's Thesis	
Clinical/Research/Readings	**8000-8999**
Includes Comprehensive Exam Preparation	
Doctoral Research and Dissertation	**9000-9999**

Northeastern University Grade Scale

Letter Grade	Numerical Equivalent	Explanation
A	4.0	Outstanding Achievement
A-	3.667	
B+	3.333	
B	3.0	Good Achievement
B-	2.667	
C+	2.333	
C	2.0	Satisfactory Achievement
C-	1.667	
D+	1.333	
D	1.0	Poor Achievement
D-	0.667	
F	0.0	Failure
I		Incomplete
IP		In Progress
NE		Not Enrolled
NG		Grade not reported by Faculty
S		Satisfactory (Pass/Fail basis; counts toward total degree requirements)
U		Unsatisfactory (Pass/Fail basis)
X		Incomplete (Pass/Fail basis)
L		Audit (no credit given)
T		Transfer
W		Course Withdrawal

Course Comments

E	Course excluded from GPA
HON	Honors level course
I	Course included in GPA

LAW SCHOOL

CR	Credit
F	Fail
H	Honor
HH	High Honor
I	Incomplete
MP	Marginal Pass
P	Pass

Earned Hours

Northeastern University offers both quarter hour and semester hour programs.

Quarter Hours to Semester Hours Conversion Rate: For student records including quarter hours, the approved semester hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is equivalent to 3 credit semester courses.

From Northeastern University to Johan.H.Gonzalez@Gmail.com on 10/30/2019 01:03 PM TRAN0000018038631

Professor Geoffrey R. Stone
Edward H. Levi Distinguished Service
Professor of Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
g-stone@uchicago.edu | 773-702-4907

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing in support of Johan Gonzalez's application to serve as your law clerk beginning next year. Johan is a 2023 graduate of The University of Chicago Law School.
Before entering law school, Johan graduated from Northestern University Magna Cum Laude, where he focused on criminal justice and political science. He then worked for three years in the Office of the Massachusetts Attorney General focusing on Medicaid Fraud.

While in law school at The University of Chicago, Johan served as Comment Editor of The University of Chicago Legal Forum, as an active member of the Latinex Law Student Association, as treasurer of the Antitrust Law Association, and as an active member of the Immigration Rights Clinic.

Johan has a particularly interesting and moving background. He was born in Columbia and emigrated to the United States when he was four years old. His parents are both Columbians who came from incredibly poor families. In the 1990s, Cali, where he grew up, was one of the most dangerous cities in South America, and after his father and several other family members had been shot, his parents decided enough was enough and they moved to America. Once arriving here, both of his parents worked from 50 to 80 hours per week in order to make ends meet and to help provide for their parents who were still in Columbia. His mother is a factory worker and his father is a long-haul trucker. That he made it to where he is today is truly amazing.

Johann graduated from law school with grades placing him just over the middle of his class. Ordinarily, I wouldn't recommend a student with such grades, but given his personal background his performance seems pretty impressive. Moreover, during the first half of law school, Johan's father was placed in an immigration detention center, a situation that put special family responsibilities on Johan, thus limiting the extent he could focus on his courses.

Johan was a student in my course on Constitutional Law III (Equal Protection and Due Process). In class, Johan was an active participant and although I knew nothing about his personal background at that time, he struck me as very impressive. His grade in my course put him in roughly the top 15% of the class.

My personal interactions with Johan were always lively, warm and interesting. All things considered, and especially in light of his background, I think he would be an excellent law clerk.

If you have any questions, please feel free to call on me anytime.

With best wishes.

Sincerely yours,
Geoffrey R. Stone

John Rappaport
Professor of Law
University of Chicago Law School
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e-mail : jrappaport@uchicago.edu
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June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Johan Gonzalez is not a typical clerkship applicant. He has had, in my estimation, something of an extraordinary life, surmounting significant adversity to become the first in his family to attend college and then graduate school. This adversity has, in some respects, created a drag on certain traditional markers of academic achievement, as I will discuss. But in other respects, Johan's accomplishments have been remarkable. Johan would come to you not only with a University of Chicago legal education and experience on the University of Chicago Legal Forum, but also four years of work experience at the Massachusetts Attorney General's Office. The proposition of hiring Johan is not entirely without risk, but my guess is that it would be immensely rewarding for both parties. I recommend you give him a serious look.

Johan was assigned to my section of 1L Criminal Law in the Winter Quarter of 2021. It was a good group, I remember, and Johan held his own in every respect. His cold calls were solid, and he struck me as smart and likable in social settings. The 177 he earned on the exam—which puts him right at the class's median—seemed about right, maybe a tad low compared to my expectations. When I had him again the following quarter in Criminal Procedure, he began to stand out a little more. He seemed to be finding his stride. He was clearly interested in the material and asked good questions to try to get things right. His exam was stronger, too, earning a 179—a high B+ on Chicago's unforgiving curve. That spring, Johan was invited to join the University of Chicago Legal Forum (on which he now serves as a Comments Editor).

Only when I began advising Johan about clerkships did I come to learn that his performance in my classes had been a high point of his 1L year. To be frank, I was surprised that his grades weren't significantly better than his transcript showed. As I started to talk with him more, it was like peeling back the layers of an onion. Johan shared with me that his father, a Colombian immigrant, had been in removal proceedings during Johan's 1L year and part of his 2L year. Johan had been traveling for his father's hearings and assisting him in navigating the removal process, an enterprise both time-consuming and emotionally draining. (Johan had also continued his work with the Massachusetts Attorney General's Office through his first two quarters of law school.) After the proceedings were administratively closed, Johan's grades improved significantly—all of his subsequent grades have been at or above the median, which I am fairly confident better reflects his underlying academic ability.

Nor was this the first time Johan had had to step up to support his family. Johan's parents immigrated to New York from Cali, Colombia after Johan's father and several relatives were victimized by gun violence. Both of Johan's parents were poor, even by Colombian standards—his paternal grandparents were peasant farmers and his maternal grandmother was a fishmonger. Settling in Millerton, a small town in the Hudson Valley, Johan's mother found custodial and factory work, while his father became a long-haul trucker. They divorced when Johan was still young and, at age 13, Johan began working to make ends meet for his mother, who had just given birth to his half-sister. Johan's sister was born prematurely with Down Syndrome, a heart condition, and other serious health issues. Because her father was largely absent, Johan assumed a fatherly role with her (in addition to contributing to the family's bottom line). Around the same time, Johan's father was placed in immigration detention. Despite all this, Johan graduated near the top of his high school class, matriculating at Northeastern University, from which he later graduated magna cum laude. His internship with the Massachusetts AG, along with one at the U.S. Attorney's Office in Boston, propelled him into law.

Johan has a maturity and strength of character that few of his classmates can match. He hopes to become a federal prosecutor someday, specializing in financial and computer crimes. At this early stage in his career, he's already amassed a wealth of experience relevant to that end. I expect he'll make it all the way.

As I said at the outset, I understand that Johan is a somewhat unconventional clerkship candidate. I would understand if questions remained. If they do, please do not hesitate to contact me.

Sincerely,

John Rappaport

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL

1111 East 60th Street | Chicago, Illinois 60637
PHONE 773-702.9611 | FAX 773-702-2063
E-MAIL nhallett@uchicago.edu
www.law.uchicago.edu

Nicole Hallett
Clinical Professor of Law

May 25, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Johan Gonzalez Clerkship Application

Dear Judge Walker:

I write to recommend Johan Gonzalez for a clerkship in your chambers. I am a Clinical Professor of Law and Director of the Immigrants' Rights Clinic (IRC) at the University of Chicago Law School. IRC is a small, experiential course that enrolls 8-10 students each year. I meet with each student individually multiple times each quarter and meet with small student teams each week in addition to the weekly seminar. I also review and provide feedback on many drafts of work product throughout the year and observe and supervise fieldwork events such as client meetings and court appearances. Therefore, I get to know my clinic students very well and have the opportunity to observe them in many different contexts. Johan joined IRC in September 2022 and I have worked with him for three consecutive quarters. Based on this experience, I believe that Johan would make an excellent law clerk.

Johan worked on two very different and equally challenging cases over the course of the year. The first was a Section 1983 lawsuit we brought on behalf of a person detained as a material witness. When Johan joined the clinic, we were still developing our legal claims and he spent months trying to understand and apply the Seventh Circuit's qualified and absolute immunity jurisprudence. In the bench memo Johan wrote, he demonstrated that he had mastered the legal issues and adeptly navigated the case law, even though he had no prior experience with 1983 litigation. This, of course, is a very important skill to have as a law clerk – the ability to pick up and learn a new area of law in a matter of weeks or months. This memo went through multiple rounds of edits. Each draft showed improved comprehension of the legal issues and with legal research in general. Each meeting we had to discuss the memo led to additional questions that Johan would then go answer. Many of the issues had no clear answers; yet Johan did not stop researching because it was hard. I saw his research and writing skills improve massively over the course of the year.

In February, there was an urgent situation that arose in the case and we realized we needed to file the lawsuit in eight days when we had planned to file it in a few months. Most students would have had trouble handling the stress and the tight deadlines, but Johan did not. He worked tirelessly, overnight and all weekend, to prepare the complaint. He never lost his cool or even expressed any stress or worry at all. I am very proud of the lawsuit we filed and it never would have come together without Johan. One moment during this process showed to me the strength of Johan's character, his humility, and his integrity as a team member. He had to call me late one evening with news that we had missed a case that had major ramifications for our lawsuit the night before we were going to file. The mistake had not been his. It had been the mistake of another team member who was no longer in the clinic. Yet, he did not try to deflect blame. He took responsibility for failing to catch and had developed a plan for how to fix it. I learned later that he was not responsible for the error (not from him but by a third team member). I have the utmost respect for Johan. Lawyers must be able to admit error, learn from mistakes, and carry on in less than ideal circumstances. Johan has shown the ability to do all three in spades.

In his other case, we represent two non-citizens who were deported to Mexico after an unlawful arrest. In January, Johan and his partner filed humanitarian parole applications for them. The applications themselves contained forms, a letter brief, and a mountain of evidence that Johan had compiled from family and community members. His attention to detail and ability to juggle many different aspects of the project are competencies that would be helpful in any job, but especially in chambers where law clerks often have to take on multiple roles and projects on a small staff. In addition, Johan developed a close, trusting relationship with the clients, which serve him well as he transitions to a practicing lawyer.

Johan has told me that he wants to become a litigator and I believe a clerkship will be very helpful as he embarks on his legal career. I would be happy to speak about Johan in more detail if it would be useful to your decision-making. I can be reached at nhallett@uchicago.edu or 203-910-1980.

Sincerely,

Nicole Hallett
Clinical Professor of Law
University of Chicago Law School

NH/z

Johan Gonzalez

5135 South Drexel Avenue #3A, Chicago, IL 60615 • 845-505-0076 • Johan.h.gonzalez @gmail.com

WRITING SAMPLE

I drafted the following memorandum as a 3L student attorney for the Immigrants' Rights Clinic. The memorandum outlines the possible charges that our client could bring against local government officials who allegedly violated his civil rights and what defenses they could raise. The attached memorandum is an excerpt and includes only the section of the memorandum that discusses our client's potential Fourth Amendment claims. I received feedback from my clinic supervisor and two teammates, but received no substantive edits. I have received permission to use this as a writing sample. For confidentiality purposes, all identifying facts and names have been changed. The following provides a brief summary of the facts of the case.

While plaintiff, Carlos Ramirez, was in the custody of the U.S. Immigration and Customs Enforcement (ICE) in Nevada, Defendant Crawford County Assistant States's Attorney Tom Langton identified him as a material witness for a trial he was set to try. Defendant Langton had been made aware of Mr. Ramirez's desire to testify on behalf of the State and his eligibility for a U visa that would have allowed Mr. Ramirez to voluntarily testify and avoid deportation. Instead, Defendant Langton, in collaboration with Defendant Sergeant Paul Ross and Officer John Hardy of the Crawford County Sheriff's office, arranged with ICE to have Mr. Ramirez transferred from ICE custody and unlawfully detained at the Crawford County Detention Facility, thereby ensuring he could be returned to ICE and deported after testifying. However, the Defendants knew that they could not detain Mr. Ramirez at the request of ICE because such detention would be illegal under Michigan sanctuary laws. They were also aware that they could not detain Mr. Ramirez pursuant to the writ because it merely authorized them to bring him before a judge on the day they obtained custody of him. Despite this, the Defendants detained Mr. Ramirez for forty-eight days before bringing him before a judge. This unlawful detention was also approved by policymaking authorities within the Sheriff's Office.

ANALYSIS

I. Federal Claims Pursuant to 42 U.S.C. § 1983

42 U.S.C. § 1983 allows plaintiffs to bring claims against "[e]very person who, under the color [of law] . . . subjects . . . any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." In other words, Section 1983 provides a cause of action for those, like Mr. Ramirez, who have been deprived of their constitutional rights or other federal law protections.

A. Defendants Hardy and Ross Violated Mr. Ramirez's Fourth Amendment Right to be Free from Unreasonable Seizures

For Fourth Amendment purposes, Mr. Ramirez must first demonstrate that a government actor, acting under the color of law, deprived him of his right to remain free from "unreasonable seizures." *Graham v. Connor*, 490 U.S. 386, 394 (1989). An individual acts under the color of law when the state actor relies on their legal authority for the challenged conduct, even if it was not permitted under state law. *Ali v. Vill. of Tinley Park*, 79 F. Supp. 3d 772, 775 (N.D. Ill. 2015). Defendants Hardy and Ross were on duty, in uniform, and acted within the scope of their employment as officers with the Crawford County Sheriff's Office when they took custody of Mr. Ramirez from ICE and transported him to Crawford County.

Mr. Ramirez must then demonstrate that he was seized as a result of the Defendants' actions. *Torres v. Madrid*, 141 S. Ct. 989, 1003 (2021). A seizure generally occurs when an officer applies force to the body with intent to restrain an individual's movements. *Id*. While an arrest is the quintessential form of a seizure, pretrial detentions are also seizures for Fourth Amendment purposes. *Manuel v. City of Joliet, Ill.*, 580 U.S. 357, 364–65 (2017) (holding that claims contesting the lawfulness of pretrial detention are governed by the Fourth Amendment). By bringing Mr. Ramirez to the Crawford County Detention Facility and checking him into the facility, the Defendants subjected Mr. Ramirez to a seizure.

While Mr. Ramirez's pretrial detention is a seizure, seizures are not per se unconstitutional. The Fourth Amendment only protects individuals against *unreasonable* seizures. *Torres*, 141 S. Ct. at 996.

Probable cause is generally "an absolute defense" to claims that the officers committed an unreasonable seizure. *Ewell v. Toney*, 853 F.3d 911, 919 (7th Cir. 2017). However, the Court has long held that this only justifies a temporary detention, and that an arrestee's pretrial restraint on his liberty is unlawful unless a judge has determined that probable cause existed at the time of arrest. *Gerstein v. Pugh*, 420 U.S. 103, 106 (1975). Thus, even assuming there were "facts or circumstances . . . that are sufficient to warrant a prudent person, or one of reasonable caution" to believe that Mr. Ramirez had committed, was committing or was about to commit a criminal offense, *Gonzalez v. City of Elgin*, the detention became unreasonable when they failed to bring Mr. Ramirez before a judge for a probable cause determination. 578 F.3d 526, 537 (7th Cir. 2009).

However, probable cause is just one way to conduct a reasonable seizure. Seizures conducted pursuant to a warrant are also generally considered reasonable. *Graham v. Connor*, 490 U.S 386, 395 (1989). While no warrant existed for Mr. Ramirez, the Defendants may argue that the writ they possessed was functionally an arrest warrant permitting Mr. Ramirez's pre-trial detention. However, on its face the writ only permitted the officers to obtain custody of Mr. Ramirez for the purpose of transporting him to court. Thus, it is unlikely that this would be treated as the functional equivalent of a warrant. Given these circumstances, Mr. Ramirez has a strong argument that the Defendants violated his Fourth Amendment right to be free from unreasonable seizures when they detained him at the detention facility.

i. Possible Defenses Available for Defendants Hardy and Ross

While Mr. Ramirez has a strong argument that Defendants Hardy and Ross violated his Fourth Amendment, the Defendants have various defenses they could raise.

a. Defendants' Actions Were Reasonable and Did Not Violate the Fourth Amendment

The Defendants may claim that Mr. Ramirez's pretrial detention was reasonable given the totality of the circumstances. *See generally Lester v. City of Chicago*, 830 F.2d 706, 711 (7th Cir. 1987) (stating that the totality of circumstances should be considered when determining whether the seizure was

justified). There are three possible arguments that Defendants Hardy and Ross could raise to suggest their conduct was objectively reasonable.

First, the officers may argue that implied in the writ, which permitted them to obtain custody of Mr. Ramirez to bring him "before the Court on January 20, 2022," was the right to seize Mr. Ramirez. *See generally Bailey v. United States*, 568 U.S. 186, 202 (2013) (A search warrant may authorize a brief seizure of the occupants of the home, as long as the intrusion on their personal liberty is limited and is outweighed by the "special law enforcement interests at stake."). While the Defendants were implicitly permitted to seize Mr. Ramirez for the purpose of bringing him before the court, the seizure should have been brief so as to limit the intrusion on his personal liberty. The Defendants may claim that their interest in ensuring his presence at trial justified a more significant intrusion on Mr. Ramirez's personal liberty, however, it's unlikely that a forty-eight day detention could be seen as outweighed by the government's interest. *See generally Gerstein v. Pugh*, 420 U.S. 103, 114 (1975) (describing pretrial detentions as being significant intrusions on liberty with serious consequences for detainees, and that given the stakes these detentions require a judicial determination of probable cause).

A second argument that may be raised is that the writ was obtained under the Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act (Prisoners as Witnesses Act), and as such Mr. Ramirez's seizure was reasonable. 725 MICS 235. The Prisoners as Witnesses Act permits government actors to obtain custody and detain witnesses that are in "penal facilities," when their testimony is necessary. *Id.* Given that Mr. Ramirez was a material witness being detained by ICE, the Defendants may argue that Mr. Ramirez was a witness for the purpose of the Prisoners as Witnesses Act, and as such his detention was reasonable. However, when the Defendants obtained custody of Mr. Ramirez he was *not* at a penal facility, he was at a private detention facility that houses civil immigration detainees. Civil immigration detention centers have long been understood not to be penal facilities. *Wong v. United States*, 163 U.S. 228, 235 (1896) (holding that penal punishment of immigrants without criminal charges unconstitutional); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (describing immigration detention as civil rather than penal). As such, the Act should not be construed to apply to Mr. Ramirez.

However, even if it could be interpreted to apply to him, Mr. Ramirez could argue that the Act should not be applied in such a manner because doing so would clearly violate Michigan sanctuary laws which prohibit state and local government actors from holding non-citizens detained for the purpose of turning them over to ICE.

Assuming that a judge agrees with Mr. Ramirez, the Uniform Act to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings (Uniform Act) would govern as to how Mr. Ramirez could be detained by the Defendants. 725 MICS 220. However, under the Uniform Act, witnesses can *only* be detained *after* they have been brought before a judge who has determined that detention is the only way to secure the witness's testimony. 725 MICS 220/2; *see People v. Johns*, 2016 MI App (1st)160480, 88 N.E.3d 1051, 1054 (2016) (Recognizing that witnesses need to be brought before a judge and *before* being incarcerated so "that [the] witness [may] be given the opportunity to sign a written undertaking to appear at trial."). Mr. Ramirez did not receive such a hearing prior to being detained or even after a reasonable amount of time after. Instead, he was detained for forty-eight days before being brought before a judge. Such a detention would violate 725 MICS 220 and should constitute an unreasonable pretrial detention.

Yet, even if a judge was to find that the Prisoners as Witnesses Act did apply, it's unlikely that Mr. Ramirez's entire detention would be considered reasonable. This is due to the fact that the circumstances that justified Mr. Ramirez's initial detention drastically changed, and the Court has long held that a change in the circumstances that justified a seizure may make the seizure unreasonable. *See Florida v. Royer*, 460 U.S. 491 (1983) (explaining that the seizure by police became unreasonable when the circumstances drastically changed). In Mr. Ramirez's case, the Defendants were made aware just one day after they detained him that ICE had administratively closed his case and as a result ICE could no longer legally hold him in detention. In other words, Mr. Ramirez was no longer a detained witness for the purpose of the Prisoners as Witnesses Act and thus the Act could no longer justify his detention.

In that case, Mr. Ramirez's detention would be governed by the Uniform Act which would require him to be brought before a judge to determine whether he could remain in detention. 725 MICS 220/2.

Given the facts of this case, it would be reasonable to assume that a judge would allow for a *reasonable* delay in getting Mr. Ramirez before the court. *Chortek v. City of Milwaukee*, 356 F.3d 740, 746–47 (7th Cir. 2004) (stating that a reasonable delay is permitted in order to account for the administrative steps required after an arrest). However, delays of over forty-eight hours are presumed unreasonable. *Id*. at 747. Mr. Ramirez's forty-seven day detention as such would be considered unreasonable. Moreover, "a delay motivated by ill will against the arrested individual" is unreasonable. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991). In Mr. Ramirez's case there is evidence to suggest that the delay in getting him before a judge was motivated by the Defendants desire to evade Michigan sanctuary laws and have him deported. Such ill will certainly could not be used to justify his detention.

Assuming that the court agrees that Mr. Ramirez's detention was not reasonable under state law, the Defendants may try to argue that it was justified because of his immigration violations. While there are circumstances under which a seizure for those reasons would be justified, those situations are limited, and none of those apply here. *See Arizona v. United States*, 567 U.S. 387, 408 (2012).

While Crawford County had signed a detainer agreement, that detainer agreement was not a formal 287(g) agreement which would have justified the Defendants' seizure of Mr. Ramirez for immigration violations. While the detainer agreement demonstrates an effort to cooperate, it alone is not the functional equivalent of a 287(g) agreement because it does not subject "state officers to federal supervision or federal direction in the execution of the detainer . . . and it does not require the state officers executing it[,] the training or certification required under federal law of state officers performing the functions of an immigration officer." *Lopez-Aguilar v. Marion Cnty. Sheriff's Dep't*, 296 F. Supp. 3d 959, 974 (S.D. Ind. 2017).

Nor is there any indication that this was part of a "joint task force with federal officers . . . executing a warrant." *Id*. at 410. The officers would also have been permitted to make the arrest if the noncitizen had been convicted of a felony but only after the state actors had consulted with the federal government, or if Mr. Ramirez had been arrested for the federal crime of "bringing and harboring certain

aliens." *Id*. at 409. Absent these grounds, Mr. Ramirez's arrest should be found to exceed the "limited circumstances" in which state officers *may* enforce federal immigration law. *Id* at 408.

b. Qualified Immunity Defense

However, even if Mr. Ramirez could demonstrate that his pretrial detention was unreasonable, the Defendants could still evade liability by invoking qualified immunity. Qualified immunity protects officers from civil liability, *unless* the constitutional or statutory right that they allegedly violated was clearly established before the incident occurred. *See Anderson v. Creighton*, 483 U.S. 635, 639–46 (1987). In determining whether qualified immunity applies, courts must determine whether the plaintiff's constitutional or statutory rights were violated and whether the right at issue was clearly established at the time the incident occurred. *Id*. Courts may start with either prong of the analysis, and if the answer to either question is no, the defendant is entitled to qualified immunity. *Taylor v. Ways*, 999 F.3d 478, 487 (7th Cir. 2021). While the Supreme Court has suggested that to preserve judicial resources, courts should begin with the second prong of the analysis, the Seventh Circuit has varied on which question they address first. *See Taylor v. Ways*, 999 F.3d 478 (7th Cir. 2021) (determining first whether there was a constitutional violation); *see also Howell v. Smith*, 853 F.3d 892, 897 (2017) ("Here, in the hope that our decision will provide meaningful additional guidance to police officers operating in the field, we address the first prong."). *But see Leiser v. Kloth*, 933 F.3d 696, 701(7th Cir. 2019) ("Because the second prong is dispositive here, we will address only whether the right at issue was clearly established under the circumstances the defendant faced.").

Given the previous discussion on whether a constitutional violation occurred, this section will focus only on the second prong of the qualified immunity analysis. Whether a right is "clearly established" depends in part on finding existing precedent that has placed the question at issue "beyond debate." *Kisela v. Hughes*, 138 S. Ct. 1148 (2018). To satisfy this burden, Mr. Ramirez must show "either a reasonably analogous case that has both articulated the right at issue and applied it to a factual circumstance *similar* to the one at hand *or* that the violation was so obvious that a reasonable person necessarily would have recognized it as violation of the law." *Howell*, 853 F.3d at 897. While the facts of

the analogous case need not be identical, the case must have the capacity of making it clear to a "reasonable officer" in the defendants' position that his alleged actions violated the constitution. *Kloth*, 933 F.3d at 702 (7th Cir. 2019) ("This requirement does not mean [the plaintiff] had to find a case "on all fours" with the facts here.").

Given the unique facts of this case, it's unlikely that there is a single case that demonstrates that a "reasonable officer" in the Defendants' position would have noticed that their conduct violated the constitution. However, various cases may help demonstrate that a reasonable officer would have known that seizures that exceed the boundaries permitted by the circumstances are unconstitutional. Mr. Ramirez may also be able demonstrate that the violation "was so obvious that a reasonable person necessarily would have recognized it as violation of the law." *Howell*, 853 F.3d at 897.

i. Exceeding the scope of an authorized seizure is unconstitutional

If Mr. Ramirez was detained pursuant to the Uniform Act to Secure the Attendance of Witnesses, then Mr. Ramirez must demonstrate a reasonable officer in the Defendants' shoes would have reasonably known that they could not detain him without bringing him before a judge because doing so would exceed the scope of the Writ. In *People v. Johns,* the Appellate Court of Michigan reviewing an emergency motion by the petitioner to review a no-bail order entered by the circuit court after he was determined to be a material witness for an upcoming trial, stated that a material witness could only be placed in the "custody of the sheriff *only* after the witness refused to agree in writing to appear at trial." 2016 Ill. 160480, 88 N.E.3d 1051, 1054 (2016). While the Court did not hold that bypassing the process was a violation of the Constitution, the court condemned the state's attempt to "read into the statute additional circumstances that would warrant such a serious infringement on a witness's freedom." *Id*. at 1055. Moreover, in *People v. McDonald*, the Court made clear that courts were required to "balance the need for a witness to appear at trial with the witness's constitutional right to freedom from unnecessary restraint" when determining whether to hold a material witness in custody. 322 Ill. App. 3d 244, 247, 749 N.E.2d 1066 (2001). These two cases, Mr. Ramirez could argue sufficiently put a "reasonable officer" on notice

that a material witness may not be held in custody without first being given the opportunity to sign a written undertaking to appear at trial and that failure to do so violates the individuals fourth amendment rights to be free from unreasonable seizures. Moreover, while *Gerstein v. Pugh* does not explicitly address witnesses in pretrial detention, the Court's procedural protection on pretrial detainees focuses on the rights of the individual rather than their status or what justified their detention and as such could be argued should have given the Defendants sufficient notice. 420 U.S. 103 (1975).

Alternatively, if Mr. Ramirez's initial detention was justified under the Prisoners as Witnesses Act, then it must be demonstrated that case law exists that would have put a reasonable officer in the Defendants' shoes on notice that when the circumstances that justified an initial seizure change, the seizure is no longer reasonable and in violation of the Fourth Amendment. That idea is not novel. The Supreme Court has clearly stated that reasonable seizures can become unreasonable when the seizure "exceed[s] that permitted by the terms of a validly issued warrant," and when the circumstances justifying a limited seizure materially change. *Horton v. California*, 496 U.S. 128, 140 (1990); *see also Florida v. Royer*, 460 U.S. 491 (1983) (explaining that the seizure by police became unreasonable when the circumstances changed drastically).

While these cases could be used to demonstrate that a reasonable officer in the defendants' shoes knew their conduct would violate Mr. Ramirez's Fourth Amendment rights, the facts of these cases are not analogous enough to Mr. Ramirez's case which could lead a court to hold otherwise. *See Kloth*, 933 F.3d at 703–04 (discussing that while the general principle had been "clearly established," the facts of the other cases cited, the differences in procedural posture and standard of review undermined "that the right at issue here was clearly established.").

ii. Patently obvious constitutional violations are not protected by qualified immunity

While an analogous case may not exist, the second prong can also be satisfied by demonstrating that the Defendants' conduct was "so outrageous that no reasonable [] officer would have believed the conduct was legal." *Id*. at 704. While this is a viable way of defeating the qualified immunity defense, the Seventh Circuit has made it clear that this occurs only in "rare cases," where the constitutional violation is

"patently obvious," and as such the plaintiffs may not need to cite closely analogous cases because "widespread compliance with a clearly apparent law may have prevented the issue from previously being litigated." *Id.* (quoting *Jacobs v. City of Chicago*, 315 F.3d 758, 767 (7th Cir. 2000).

The Supreme Court has long held that the "Fourth Amendment requires a timely judicial determination of probable cause" either before the detention or shortly thereafter. *See Gernstein v. Pugh*, 420 U.S. 103, 114–15 (1975). While Mr. Ramirez had not been detained after being arrested by an officer who believed he had probable cause to believe he had engaged or was engaging in criminal activity, Mr. Ramirez's detention was nonetheless a seizure for Fourth Amendment purposes and as such warrants the same protections. *See Manuel v. City of Joliet, Ill.*, 580 U.S. 357 (2017) (pretrial detentions are seizures under the Fourth Amendment). Whether detained pursuant to an arrest or not, the pretrial detention implicates the same rights that motivated the Courts holding in *Gerstein*. *Id.* ("The consequences of prolonged detention may be more serious than the interference occasioned by arrest . . . . When the stakes are this high, the detached judgement of a neutral are essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty."). The state of Michigan has also acknowledged the importance of these protections in enacting laws that require witnesses to be brought before a judge and that *before* being incarcerated "that [the] witness [] be given the opportunity to sign a written undertaking to appear at trial." *Johns*, 88 N.E.3d at 1054. Given the Supreme Court precedent, Michiga State Court precedent, and state law, Mr. Ramirez has a strong argument that the Defendants failure to bring him before a judge is a "patently obvious" constitutional violation. *Jacobs v. City of Chicago*, 315 F.3d 758, 767 (7th Cir. 2000).

The Defendants may argue that Mr. Ramirez was eventually brought before a court, and as such no violation occurred. While Mr. Ramirez was *eventually* brought before a court, the Seventh Circuit has held that these pre-process detentions may not be excessive, and delays in bringing individuals before a judge must be *reasonable*. *Chortek v. City of Milwaukee*, 356 F.3d 740, 746–47 (7th Cir. 2004). Mr. Ramirez bears the burden of establishing that his pre-process detention was excessive. *Portis v. City of Chicago*, 613 F.3d 702, (7th Cir. 2010).

The Court has determined that a forty-eight-hour detention is presumptively reasonable in the context of probable cause determinations. *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). "In the case of detentions over forty-eight hours, the government bears the burden of proving an emergency or other extraordinary circumstance which justifies the delay" in getting the individual before a judge. *Chortek*, 356 F.3d at 747. Again, while these cases concern probable cause hearings for individuals charged with committing a crime, Mr. Ramirez has the same interest as those plaintiffs in ensuring that his Fourth Amendment rights aren't "at the mercy of the officers' whim or caprice." *Gernstein*, 420 U.S. at 862. Given that both detentions implicate the same rights and raise the same concerns, the procedural protections should not differ. However, even if more leniency was provided to the government under these circumstances, Mr. Ramirez was held in pre-trial detention for nearly two months before receiving his statutorily required hearing. Given these circumstances, the Defendants actions could be characterized as patently unlawful, and as such unprotected by qualified immunity.

Mr. Ramirez could also argue that his detention was "patently unlawful" because it was done for the purpose of enforcing civil immigration laws. In *Arizona v. United States*, the Court clearly stated local and state officers are generally prohibited from seizing nonimmigrants for civil immigration violations. 567 U.S. 387 (2012). Mr. Ramirez can point to various communications between the Defendants and ICE to demonstrate that the Defendants only sought to detain Mr. Ramirez to cooperate with ICE to have Mr. Ramirez deported. Mr. Ramirez may also use those communications to help show that the Defendants knew that their conduct was illegal under state law and that there were alternative *legal* means to obtain Mr. Ramirez's testimony. While *Arizona v. United States* would not satisfy the clearly established law requirement, this case could serve to demonstrate that the Defendants actions were "so obvious that a reasonable person necessarily would have recognized it as violation of the law." *Howell*, 853 F.3d at 897.

Mr. Ramirez has a particularly strong argument considering that there were additional state laws that prohibited such behavior and that such laws had received broad coverage across the state. Moreover, the Seventh Circuit has signaled their belief that even an overnight detention for the purposes of transferring an individual to ICE may violate an individual's Fourth Amendment rights. *Lopez-Aguilar v.*

Marion County Sheriff's Department, 924 F.3d 375, 381–82 (7th Cir. 2019) (dismissing the case for other reasons but stating that the officer's actions as alleged in the complaint were an instance of illegal conduct).

B. Monell Claim: Crawford County Sherriff's Office

Even if Defendants Hardy and Ross's actions are ultimately protected by qualified immunity, Mr. Ramirez may still succeed with his *Monell* claims against the Crawford County Sheriff's Office, for they are not protected by qualified immunity. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (reemphasizing that qualified immunity does not apply to government entities). Section 1983 claims may be brought against local government entities, including police departments and municipalities as long as they are not the state or an arm of the state. *See Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978); *See also Moor v. County of Alameda*, 411 U.S. 693, 717–25 (1973). However, local government entities may not be held liable under the theory of respondeat superior and may only be held liable when the constitutional deprivation is proximately caused by the governmental entity. *Monell*, 436 U.S. at 692. Moreover, they may not be held liable where there has been no constitutional violation. *Heller*, 475 U.S. at 799.

There are four ways to establish municipal liability. First, plaintiffs may point to a formal promulgated policy. *Monell*, 436 U.S. at 692. They may also point to a well-settled custom or practice that is not written or formally adopted, but that is a pervasive, long-standing practice that has the force of law. *Id*. at 691. The third method requires that the plaintiff demonstrate that a final decision was made by someone with policymaking authority for the government entity. *Pembaur v. City of Cincinnati*, 475 U.S. 469, (1986). A single act or decision by a final policymaking authority may be sufficient for the purposes of bringing a *Monell* claim. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 482–83 (1986)). Monell liability may also apply if a plaintiff is able to demonstrate that failure to train, supervise, and screen employees caused the harm they suffered. *See City of Canton v. Harris*, 489 U.S. 378 (1989).

Mr. Ramirez may attach *Monell* liability by demonstrating that a final decision was made by someone with policymaking authority or alternatively that the individual with policymaking authority delegated that authority to another person whose decision proximately caused Mr. Ramirez's unlawful detention. *Praprotnik*, 485 U.S. at 126. ("If, however, a city's lawful policymakers could insulate the government from liability simply by delegating their policymaking authority to others, Section 1983 could not serve its intended purpose."). The identification of a policymaking official is a question of state law. *Id* at 124. Under Michigan law, the Crawford County Sheriff Eric Roberts is the warden of the Crawford County Adult Detention Facility. 730 MICS 125/2 ("The Sheriff of each county in this State shall be the warden of the jail of the county."). Thus, Mr. Ramirez can establish municipal liability if he can proffer evidence that reasonably suggests that Sheriff Roberts approved his unlawful detention.

However, absent this, Mr. Ramirez would need to present evidence that Sheriff Roberts delegated his policymaking authority to the individual that approved his detention. *McMillian v. Monroe County*, 520 U.S. 781, 786 (1997) (stating that policymaking authority may be delegated). The defense may argue that *DeGenova v. Sheriff of DuPage County* establishes that Michigan sheriffs have exclusive final policymaking authority over jail operations and thus Sheriff Roberts could not have delegated his policymaking authority. 209 F.3d 973, 975-76 (7th Cir. 2000). However, that case establishes only that in Michigan sheriffs generally hold policymaking authority over jail operations. It does not address whether they can delegate that authority, and in fact in Michigan, State law permits Sheriffs to delegate such authority by appointing Deputy Sheriffs who may "perform any and all duties of the Sheriff, in the name of the sheriff, and the acts of such deput[y] shall be held to be acts of the sheriff." 55 MICS 5/3-6015.

In 2017, Sheriff Roberts utilized this power by appointing Chester Brown to be a Chief Deputy Sheriff as well as the Warden of the detention facility. Brown remained in this position through Mr. Ramirez's detention and was one of the officers who Chief Deputy Daniel Peters forwarded Defendant Ross's email to, requesting clearance to detain Mr. Ramirez at the Detention Facility to cooperate with ICE. While Brown's title of Warden would seem to indicate that he had in fact been delegated policymaking authority by Sheriff Roberts, the title alone is insufficient evidence to establish delegation

of such authority. *Gonzalez v. McHenry County*, 40 F.4th 824, 827 (7th Cir. 2022). Mr. Ramirez, however, does not need to have direct evidence that the delegation of authority occurred, instead, he may rely on indirect evidence that raises an inference that Warden Brown was in fact delegated policymaking authority by Sheriff Roberts. *See Kujawski v. Board of Com'rs of Bartholomew County, Ind.*, 183 F.3d 734, 739–40 (7th Cir. 1999). Moreover, Mr. Ramirez would not have to show that Warden Brown was delegated all of the Sheriff's policymaking authority as Warden of the detention facility. Instead, all that Mr. Ramirez would have to demonstrate is that Warden Brown was given "the power to make official policy on *a particular issue*," in his case regarding detentions at the facility. *McMillian v. Monroe County*, 520 U.S. 781, 786 (1997) (quoting at *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 737 (1989)); *see also Valentino v. Village of South Chicago Heights,* 575 F.3d 664, 676 (7th Cir. 2009).

Given that there is no direct evidence establishing that Sheriff Roberts delegated his policymaking authority to Warden Brown, Mr. Ramirez will have to rely on indirect evidence. Specifically, Mr. Ramirez can argue that while Warden Brown's title does not establish delegation of policymaking authority, his responsibilities at the facility suggests that he was delegated policymaking authority over detentions. In support of this argument, Mr. Ramirez can point to Warden Brown's responsibility to review and revise the rules that detainees must comply with and his duty to "direct and administer the jail on a daily basis." *Gonzalez v. Josephson*, No. 14-CV-4366, 2019 WL 1013737 at *11 (N.D. Ill. 2019). Additionally, Sheriff Roberts has stated that Warden Brown is the one who is at the detention facility "40 hours a week" managing the facility and "running the everyday operations," not him. *Baker v. Crawford County Sheriff Eric Roberts Et al.*, Docket No. [redacted]-cv-[redacted] ([redacted] July 07, 2022) (Eric Roberts' Deposition). Sheriff Roberts has also made clear that Warden Brown is given broad discretion to operate the detention facility. *Id*. (Sheriff Roberts stating that he doesn't "micromanage" Warden Brown and allows him to manage the facility given his better familiarity with the operation of the facility). Given the broad discretion that Warden Brown is given to operate the facility and determine policies for detainees, as well as his title, and the fact that it was him who was asked whether Mr. Ramirez could be detained at the facility, Mr. Ramirez could successfully argue that

Warden Brown was delegated policymaking authority over detentions at the facility at least for the purpose of surviving a motion to dismiss and obtaining discovery. Discovery should help Mr. Ramirez conclusively determine whether Warden Brown had policymaking authority over detentions at the facility, and whether Sheriff Roberts intended to delegate that power to him. *See Awalt v. Marketti*, 74 F. Supp. 3d 909, 933–34 (N.D. Ill. 2014).

If Mr. Ramirez can demonstrate that Warden Brown had policymaking authority, then Warden Brown's authorization of Mr. Ramirez's detention could be used to attach *Monell* liability to the Crawford County Sheriff's Office. However, for that to attach, Mr. Ramirez would still need to demonstrate that Brown's approval "directly caused the constitutional violation." *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 239 (7th Cir. 2021); *see also Gonzalez v. McHenry County, Illinois*, 40 F.4th 824, 829 (7th Cir. 2022) ("the plaintiff must demonstrate a direct causal link between the municipal action and the deprivation of federal rights."). In Mr. Ramirez's case, his detention at the Crawford County Adult Detention Facility *would* not have occurred had Warden Brown rejected Defendant Ross's request to detain Mr. Ramirez for the purpose of assisting ICE.

While the Crawford County Sheriff's Office may argue that it was Defendant Langton who was the "moving force" behind Mr. Ramirez's detention since it was his conduct that got the ball rolling. Moreover, given that Defendant Langton is not a policymaking authority for the Crawford County Sheriff's Office, *Monell* liability cannot attach. However, this interpretation should fail given that the Court has long held that to demonstrate that someone was the "moving force" behind an injury, the plaintiff must only "show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." *Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 404 (1997). In Mr. Ramirez's case, absent Brown's approval, Mr. Ramirez *could not* have been detained at the facility. Moreover, the email that he received should have reasonably put him on notice that Mr. Ramirez's detention was unlawful because it was done entirely to aid ICE in violation of state law. As such, Mr. Ramirez could reasonably succeed on his *Monell* claims against the Crawford County Sheriff's Office.

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June 12, 2023

The Honorable Jamar K. Walker
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Dear Judge Walker:

I am a rising third-year law student at the University of Southern California Gould School of Law and am interested in a clerkship in your chambers starting in the summer or fall of 2024. Because of my keen interest in legal writing and litigation, I was particularly pleased to note the clerkship posting for your chambers on OSCAR. After earning my law degree, I would like to enhance my legal research and writing skills under your mentorship and gain practical experience in a federal district court. With my strong interest in becoming a litigator, I also look forward to working on pending cases and learning about motions practice firsthand while also joining the community of a new state such as Virginia. I believe that the learning experience of clerking for a judge such as yourself would be invaluable to my continuing legal education and career.

My previous academic and leadership experience would make me an asset to your chambers. As a judicial extern on the United States Court of Appeals for the Ninth Circuit to the Hon. Kim McLane Wardlaw, I developed strong research, analytical, and writing skills, and had the opportunity to work in and contribute to a judicial chambers. While in law school, I have excelled in USC's Legal Research, Writing, and Advocacy program and currently serve as a Legal Writing & Advocacy Fellow to the first year classes. Additionally, as the incoming Editor-in-Chief of the *Southern California Law Review*, I look forward to working closely with my peers and scholars in the legal field while furthering my writing and editing skills. Given my experience, I am confident that I possess the skillset—as well as the dedication and enthusiasm—to meaningfully contribute to your chambers.

For your review, I have attached my resume, undergraduate and law school transcript, legal writing sample, and letters of recommendation. I would be happy to send a list of references and update my application once the remainder of spring grades are posted. Please do not hesitate to contact me should any further information be helpful in your review. I would welcome the opportunity to interview with you and can be reached at (661) 487-7042 or madeline.goossen.2024@lawmail.usc.edu. Thank you for your time and consideration.

Respectfully,

Madeline Goossen

Madeline Lei Momi Goossen

Pasadena, California | madeline.goossen.2024@lawmail.usc.edu |(661) 487-7042

EDUCATION

University of Southern California Gould School of Law May 2024
Juris Doctor Candidate GPA: 3.60

Journal: *Southern California Law Review*, Volume 97 Editor-in-Chief; Volume 96 Staff Editor
Honors Grades: Legal Research, Writing, and Advocacy I & II (highest grade in section); Criminal Law; Legal Profession; Torts; Constitutional Law Structure; Constitutional Law Rights; Judicial Opinion Writing; Writing for Publication; Pretrial Advocacy, The Modern Supreme Court
Leadership: Women's Law Association, Alumni Chair; Older Wiser Law Students, Co-Vice President; Student Bar Association, Awards Chair; First Generation Professionals, 1L Representative

University of Southern California May 2019
Bachelor of Arts, History and Political Science (double major), *magna cum laude* GPA: 3.88

Honors: Phi Beta Kappa; Discovery Scholar; Renaissance Scholar; Dornsife Dean's List (eight semesters)
Leadership: Journal of Law and Society, Editor-in-Chief; Model United Nations, Under Secretary General

EXPERIENCE

Jeffer Mangels Butler & Mitchell LLP Los Angeles, CA
Litigation Summer Associate May 2023—present

- Participate in client meetings, prepare for hearings and oral argument, conduct legal research, draft memoranda, motions, and briefs on pending cases, and aid in pro bono projects and representation.

USC Gould School of Law Los Angeles, CA
J.D. Legal Writing & Advocacy Fellow August 2022—present

- Teach legal citation and grammar lessons to the 1L Legal Research, Writing, and Advocacy class, grade legal writing assignments such as memoranda and briefs, and prepare students for appellate style oral argument.

Teaching Assistant to Professors Darrow, Grabarsky, and Haddad August 2022—present

- Aid in course development, lead weekly discussion sections, grade papers and exams, manage class Blackboard, and review and prepare class materials for LAW 101: Law and the U.S. Constitution in Global History, LAW 225: Current Court Cases, and LAW 300: Concepts in American Law.

Research Assistant, Professor Gross May—December 2022

- Conducted legal and historical research for a book on the politics and memory of slavery and the Constitution.

United States Court of Appeals for the Ninth Circuit Pasadena, CA
Judicial Extern, Hon. Kim McLane Wardlaw August—December 2022

- Researched and wrote bench memoranda on pending cases and recommendation memoranda on cases called en banc, drafted responses to petitions for rehearing, and aided in drafting, editing, and cite-checking opinions.

Office of County Counsel Los Angeles, CA
Legal Intern, Health Services Division May—July 2022

- Processed Public Record Act requests and wrote settlement memoranda on lawsuits brought against the Department of Public Health. Assisted in the research and drafting of a county ordinance outlawing ghost guns.

USC Student-Athlete Academic Services Los Angeles, CA
Mentor Tutor August 2017—May 2019

California Strategies & Unruh Institute of Politics Los Angeles, CA
Research Intern January – December 2017

INTERESTS

Musical theatre, professional cycling, volunteering with animals, vegan baking, the New York Times Crossword

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ISSUE TO:

CONTROL #: 000002388535

RAISED SEAL NOT REQUIRED

This transcript is not valid without the university seal and the signature of the Registrar. A raised seal is not required.

Frank Chang
Registrar

Current Program of Study

01/18/2021 Juris Doctor — Law

USC Degrees Awarded

05/10/2019 Bachelor of Arts — Political Science
Magna Cum Laude
Renaissance Honors
Discovery Honors

Bachelor of Arts — History

Transfer Credit By Exam

Date:	Units:	Exam:
06/14	4.00	AP: American History
06/14	4.00	AP: English Language/Composition
06/15	4.00	AP: American Government & Politics

Transfer Detail Information

Undergraduate Units Attempted: 12.00 Earned: 12.00 Available: 12.00 Grade Points: 0.00 GPA: 0.00
Advanced Placement Credit Begin: 06/01/2013 End: 08/28/2015 Units Attempted: 12.00

USC Cumulative Totals

Undergraduate Units Attempted: 124.0 Earned: 124.0 Available: 124.0 GPA Units: 114.0 Grade Points: 442.80 GPA: 3.88
Law Units Attempted: 60.0 Earned: 57.0 Available: 57.0 GPA Units: 47.0 Grade Points: 169.50 GPA: 3.60

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NOTE: PHOTOCOPIES ARE NOT TO BE CONSIDERED OFFICIAL TRANSCRIPTS.THE REGISTRAR'S SEAL AND SIGNATURE APPEAR ON THE FIRST PAGE.

Fall Semester 2015 (08-24-2015 to 12-16-2015)

GESM-120g	A	4.0	Seminar in Humanistic Inquiry (The Russian Novel)
POSC-130g	B+	4.0	Law, Politics and Public Policy
FSEM-100	CR	2.0	Freshman Seminar (Post-9/11 America and the Death of Privacy)
FREN-150	A-	4.0	French II
ECON-203g	A	4.0	Principles of Microeconomics

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
18.0	18.0	16.0	60.00	3.75

Spring Semester 2016 (01-11-2016 to 05-13-2016)

FREN-220	P	4.0	French III
IR-210gw	A	4.0	International Relations: Introductory Analysis
WRIT-150	B+	4.0	Writing and Critical Reasoning--Thematic Approaches (Issues in Law and Social Justice)
LAW-101w	A	4.0	Law and the U.S. Constitution in Global History

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
16.0	16.0	12.0	45.20	3.76

Fall Semester 2016 (08-22-2016 to 12-14-2016)

AHIS-120gp	A-	4.0	Foundations of Western Art
HIST-385	A	4.0	Anglo-American Law before the 18th Century
POSC-370	A-	4.0	European Political Thought I
HIST-201	A	4.0	Approaches to History

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
16.0	16.0	16.0	61.60	3.85

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Spring Semester 2017 (01-09-2017 to 05-12-2017)

POSC-421	A	4.0	Ethnic Politics
HIST-498	A	4.0	Seminar on Selected Historical Topics (Global History of War Crimes.)
POSC-395	A	2.0	Directed Governmental and Political Leadership Internship
SSCI-265Lg	P	4.0	The Water Planet
HIST-275g	B+	4.0	The Worlds of the Silk Road

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
18.0	18.0	14.0	53.20	3.80

Fall Semester 2017 (08-21-2017 to 12-13-2017)

POSC-395	A	2.0	Directed Governmental and Political Leadership Internship
HIST-327	A	4.0	Twentieth Century Britain
WRIT-340	A	4.0	Advanced Writing (Advanced Writing for Pre-Law Students)
POSC-323	A	4.0	Applied Politics (Message and Media: Great Races from City Hall to the White House)

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
14.0	14.0	14.0	56.00	4.00

Spring Semester 2018 (01-08-2018 to 05-11-2018)

THTR-295	A	2.0	Theatre in Los Angeles
POSC-360	A	4.0	Comparative Political Institutions
PSYC-165Lg	A	4.0	Drugs, Behavior, and Society
HIST-395	A	4.0	Sex and the City: Constructing Gender in London, 1700-1900
POSC-340	A-	4.0	Constitutional Law

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
18.0	18.0	18.0	70.80	3.93

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Fall Semester 2018 (08-20-2018 to 12-12-2018)

HIST-498	A	4.0	Seminar on Selected Historical Topics (The Histories of the Apocalypse)
POSC-426	A	4.0	The United States Supreme Court
WRIT-440	A	4.0	Writing in Practical Contexts (Advanced Legal Writing)

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
12.0	12.0	12.0	48.00	4.00

Spring Semester 2019 (01-07-2019 to 05-10-2019)

HIST-102mg	A	4.0	Medieval People
HIST-462	A	4.0	20th Century American Thought
SWMS-349	A	4.0	Women and the Law

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
12.0	12.0	12.0	48.00	4.00

Fall Semester 2021 (08-23-2021 to 12-15-2021)

LAW-530	CR	1.0	Fundamental Business Principles
LAW-515	3.9	3.0	Legal Research, Writing, and Advocacy I
LAW-503	3.4	4.0	Contracts
LAW-502	3.0	4.0	Procedure I
LAW-509	3.8	4.0	Torts I

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
16.0	16.0	15.0	52.50	3.50

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Spring Semester 2022 (01-10-2022 to 05-13-2022)

LAW-516	4.0	2.0	Legal Research, Writing, and Advocacy II
LAW-505	3.5	3.0	Legal Profession
LAW-504	3.7	3.0	Criminal Law
LAW-508	3.5	3.0	Constitutional Law: Structure
LAW-507	3.4	4.0	Property

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
15.0	15.0	15.0	53.70	3.58

Fall Semester 2022 (08-22-2022 to 12-14-2022)

LAW-781	CR	4.0	Externship I
LAW-873	3.8	3.0	Judicial Opinion Writing
LAW-870	CR	2.0	Legal Writing Fellows
LAW-766	3.9	3.0	Writing for Publication Seminar
LAW-767A	CR	1.0	Law Review Staff

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
13.0	13.0	6.0	23.10	3.85

Spring Semester 2023 (01-09-2023 to 05-12-2023)

LAW-685	3.9	2.0	The Modern U.S. Supreme Court
LAW-820	3.6	3.0	Pretrial Advocacy
LAW-602	3.4	3.0	Criminal Procedure
LAW-870	CR	1.0	Legal Writing Fellows
LAW-532	3.8	3.0	Constitutional Law: Rights
LAW-767B	CR	1.0	Law Review Staff

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
13.0	13.0	11.0	40.20	3.65

---------- End of Transcript ----------

ACADEMIC TRANSCRIPT INFORMATION

NOTE: *The information that follows represents current University policies. Questions regarding historical University policies and/or transcript notations should be addressed to the Office of the Registrar. This document contains a number of security features. Further information or authentication can be obtained by calling the Office of the Registrar (213) 740-9230.*

COURSE CREDIT/UNIT VALUE
A semester unit is a credit of one hour per week for one semester (15 weeks in length).

COURSE NUMBERING AND CLASSIFICATION
The first digit of the course indicates the year level of the course. 000-preparatory courses; 100-first undergraduate year; 200-second undergraduate year; 300-third and fourth undergraduate years without graduate credit; 400-third and fourth undergraduate years with graduate credit for graduate students; 500-first graduate year; 600-second graduate year; and 700-third graduate year.

GRADING SYSTEM
The following grades are used: A, excellent; B, good; C, fair in undergraduate courses and minimum passing in courses for graduate credit. D, minimum passing in undergraduate courses; and F, failed. Additional grades include CR, credit; NC, no credit; P, pass; and NP, no pass. The following marks are also used: W, withdrawn; IP, in progress; UW, unofficial withdrawal; MG, missing grade; IN, incomplete; and IX, lapsed incomplete.

GRADE POINT AVERAGE (GPA) CATEGORIES/CLASS LEVEL
A system of grade points is used to determine a student's grade point average. Grade points are assigned to grades as follows for each unit in the credit value of a course. A, 4.0 points; A-, 3.7 points; B+, 3.3 points; B, 3.0 points; B-, 2.7 points; C+, 2.3 points; C, 2.0 points; C-, 1.7 points; D+, 1.3 points; D, 1.0 points; D-. 0.7 points; F, 0 points; UW, 0 points; and IX, 0 points. Marks of CR, NC, P, NP, W, IP, MG and IN do not affect a student's grade point average. There are four categories of class level and GPA: Undergraduate, Graduate, Law, and Other. UNDERGRADUATE is comprised of Freshman (less than 32 units earned), Sophomore (32 to 63.9 units earned), Junior (64 to 95.9 units earned) and Senior (at least 96 units earned). GRADUATE is comprised of any coursework attempted while pursuing a master's and/or doctoral degree. LAW is comprised of any coursework attempted while pursuing a Juris Doctor or Master of Laws degree. Other is comprised of any coursework attempted while not admitted to a degree program or coursework not available for degree credit.

CLASS RANK
The University of Southern California does not calculate or support a class rank for its undergraduate students. While most graduate programs do not rank students, requests for graduate student class rankings should be directed to the dean of the particular school in which the graduate degree was earned.

STUDENT GOOD STANDING
A student is considered to be in good standing if they are eligible to register for classes. Disciplinary good standing is determined by the Office of Community Expectations.

TRANSFER CREDIT
Coursework accepted from other institutions is summarized into undergraduate and graduate areas. The summary information includes the number of units and GPA. The transfer institution(s) and dates of attendance do not appear on the USC transcript.

GOULD SCHOOL OF LAW GRADING SYSTEMS
Beginning in Fall 2022, courses are graded numerically from 4.0 to 1.9, with letter-grade equivalents ranging from A to F. The grade equivalents are 4.0 to 3.8 (A); 3.7 to 3.5 (A-); 3.4 to 3.3 (B+); 3.2 to 3.0 (B); 2.9 to 2.7 (B-); 2.6 to 2.5 (C+); 2.4 (C); 2.3 to 2.1 (C-); 2.0 (D); and 1.9 (F).

From Fall 2012 through Spring 2022, courses were graded numerically from 4.4 to 1.9, with letter grade equivalents ranging from A+ to F. The grade equivalents are 4.4 to 4.1 (A+); 4.0 to 3.8 (A); 3.7 to 3.5 (A-); 3.4 to 3.3 (B+); 3.2 to 3.0 (B); 2.9 to 2.7 (B-); 2.6 to 2.5 (C+); 2.4 (C); 2.3 to 2.1 (C-); 2.0 (D); and 1.9 (F).

From Fall 2001 through Spring 2012, courses were graded numerically from 4.4 to 1.9, with letter grade equivalents ranging from A+ to F. The grade equivalents are 4.4 to 4.1 (A+); 4.0 to 3.8 (A); 3.7 to 3.5 (A-); 3.4 to 3.3 (B+); 3.2 to 3.0 (B); 2.9 to 2.7 (B-); 2.6 to 2.5 (C+); 2.4 (C); 2.3 to 2.0 (D); and 1.9 (F).

Prior to Fall 2001, the grading system consisted in numbers in a range from 90 to 65. A grade of 90 was equivalent to highest honors and was very rare; 89 to 85 high honors; 84 to 80, honors; 79 to 70, satisfactory; 69 to 66, unsatisfactory; and 65, failing.

OSTROW SCHOOL OF DENTISTRY GRADING SYSTEM
Students admitted to the Doctor of Dental Surgery program in Fall 1990 or later and students admitted to the International Student Program in Summer 1991 or later, are bound by the University's grading system (excluding plus/minus grades), which is detailed *above* under the heading "GRADING SYSTEM." Academic records for dentistry students who attended prior to the dates listed above are housed independent of the University's central record system. Contact the Ostrow School of Dentistry directly for this earlier academic record information.

KECK SCHOOL OF MEDICINE TRANSCRIPTS
Transcripts for medical students are housed independent of the University's central records system. Contact the School of Medicine directly for this academic record information.

LANGUAGE OF INSTRUCTION
English is the language of instruction at USC. All courses are taught in English with the exception of a few advanced language courses.

ACCREDITATION
The University of Southern California is fully accredited by the Western Association of Schools and Colleges. For additional professional accreditation information, please refer to the latest issue of Accredited Institutions of Postsecondary Education published by the American Council on Postsecondary Accreditation (COPA).

Rev.02/2023

UNIVERSITY OF SOUTHERN CALIFORNIA
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ISSUE TO:

CONTROL #: 000002388535

RAISED SEAL NOT REQUIRED

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Frank Chang
Registrar

Current Program of Study

01/18/2021 Juris Doctor — Law

USC Degrees Awarded

05/10/2019 Bachelor of Arts — Political Science
Magna Cum Laude
Renaissance Honors
Discovery Honors

Bachelor of Arts — History

Transfer Credit By Exam

Date:	Units:	Exam:
06/14	4.00	AP: American History
06/14	4.00	AP: English Language/Composition
06/15	4.00	AP: American Government & Politics

Transfer Detail Information

Undergraduate Units Attempted: 12.00 Earned: 12.00 Available: 12.00 Grade Points: 0.00 GPA: 0.00
Advanced Placement Credit Begin: 06/01/2013 End: 08/28/2015 Units Attempted: 12.00

USC Cumulative Totals

Undergraduate Units Attempted: 124.0 Earned: 124.0 Available: 124.0 GPA Units: 114.0 Grade Points: 442.80 GPA: 3.88
Law Units Attempted: 60.0 Earned: 57.0 Available: 57.0 GPA Units: 47.0 Grade Points: 169.50 GPA: 3.60

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Fall Semester 2015 (08-24-2015 to 12-16-2015)

GESM-120g	A	4.0	Seminar in Humanistic Inquiry (The Russian Novel)
POSC-130g	B+	4.0	Law, Politics and Public Policy
FSEM-100	CR	2.0	Freshman Seminar (Post-9/11 America and the Death of Privacy)
FREN-150	A-	4.0	French II
ECON-203g	A	4.0	Principles of Microeconomics

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
18.0	18.0	16.0	60.00	3.75

Spring Semester 2016 (01-11-2016 to 05-13-2016)

FREN-220	P	4.0	French III
IR-210gw	A	4.0	International Relations: Introductory Analysis
WRIT-150	B+	4.0	Writing and Critical Reasoning--Thematic Approaches (Issues in Law and Social Justice)
LAW-101w	A	4.0	Law and the U.S. Constitution in Global History

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
16.0	16.0	12.0	45.20	3.76

Fall Semester 2016 (08-22-2016 to 12-14-2016)

AHIS-120gp	A-	4.0	Foundations of Western Art
HIST-385	A	4.0	Anglo-American Law before the 18th Century
POSC-370	A-	4.0	European Political Thought I
HIST-201	A	4.0	Approaches to History

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
16.0	16.0	16.0	61.60	3.85

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Spring Semester 2017 (01-09-2017 to 05-12-2017)

POSC-421	A	4.0	Ethnic Politics
HIST-498	A	4.0	Seminar on Selected Historical Topics (Global History of War Crimes.)
POSC-395	A	2.0	Directed Governmental and Political Leadership Internship
SSCI-265Lg	P	4.0	The Water Planet
HIST-275g	B+	4.0	The Worlds of the Silk Road

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
18.0	18.0	14.0	53.20	3.80

Fall Semester 2017 (08-21-2017 to 12-13-2017)

POSC-395	A	2.0	Directed Governmental and Political Leadership Internship
HIST-327	A	4.0	Twentieth Century Britain
WRIT-340	A	4.0	Advanced Writing (Advanced Writing for Pre-Law Students)
POSC-323	A	4.0	Applied Politics (Message and Media: Great Races from City Hall to the White House)

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
14.0	14.0	14.0	56.00	4.00

Spring Semester 2018 (01-08-2018 to 05-11-2018)

THTR-295	A	2.0	Theatre in Los Angeles
POSC-360	A	4.0	Comparative Political Institutions
PSYC-165Lg	A	4.0	Drugs, Behavior, and Society
HIST-395	A	4.0	Sex and the City: Constructing Gender in London, 1700-1900
POSC-340	A-	4.0	Constitutional Law

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
18.0	18.0	18.0	70.80	3.93

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Fall Semester 2018 (08-20-2018 to 12-12-2018)

HIST-498	A	4.0	Seminar on Selected Historical Topics (The Histories of the Apocalypse)
POSC-426	A	4.0	The United States Supreme Court
WRIT-440	A	4.0	Writing in Practical Contexts (Advanced Legal Writing)

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
12.0	12.0	12.0	48.00	4.00

Spring Semester 2019 (01-07-2019 to 05-10-2019)

HIST-102mg	A	4.0	Medieval People
HIST-462	A	4.0	20th Century American Thought
SWMS-349	A	4.0	Women and the Law

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
12.0	12.0	12.0	48.00	4.00

Fall Semester 2021 (08-23-2021 to 12-15-2021)

LAW-530	CR	1.0	Fundamental Business Principles
LAW-515	3.9	3.0	Legal Research, Writing, and Advocacy I
LAW-503	3.4	4.0	Contracts
LAW-502	3.0	4.0	Procedure I
LAW-509	3.8	4.0	Torts I

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
16.0	16.0	15.0	52.50	3.50

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STUDENT NAME	STUDENT NUMBER	DATE	PAGE
Goossen, Madeline, L.	8517-7386-18	06-11-2023	5 of 5

NOTE: PHOTOCOPIES ARE NOT TO BE CONSIDERED OFFICIAL TRANSCRIPTS.THE REGISTRAR'S SEAL AND SIGNATURE APPEAR ON THE FIRST PAGE.

Spring Semester 2022 (01-10-2022 to 05-13-2022)

LAW-516	4.0	2.0	Legal Research, Writing, and Advocacy II
LAW-505	3.5	3.0	Legal Profession
LAW-504	3.7	3.0	Criminal Law
LAW-508	3.5	3.0	Constitutional Law: Structure
LAW-507	3.4	4.0	Property

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
15.0	15.0	15.0	53.70	3.58

Fall Semester 2022 (08-22-2022 to 12-14-2022)

LAW-781	CR	4.0	Externship I
LAW-873	3.8	3.0	Judicial Opinion Writing
LAW-870	CR	2.0	Legal Writing Fellows
LAW-766	3.9	3.0	Writing for Publication Seminar
LAW-767A	CR	1.0	Law Review Staff

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
13.0	13.0	6.0	23.10	3.85

Spring Semester 2023 (01-09-2023 to 05-12-2023)

LAW-685	3.9	2.0	The Modern U.S. Supreme Court
LAW-820	3.6	3.0	Pretrial Advocacy
LAW-602	3.4	3.0	Criminal Procedure
LAW-870	CR	1.0	Legal Writing Fellows
LAW-532	3.8	3.0	Constitutional Law: Rights
LAW-767B	CR	1.0	Law Review Staff

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
13.0	13.0	11.0	40.20	3.65

End of Transcript

ACADEMIC TRANSCRIPT INFORMATION

NOTE: *The information that follows represents current University policies. Questions regarding historical University policies and/or transcript notations should be addressed to the Office of the Registrar. This document contains a number of security features. Further information or authentication can be obtained by calling the Office of the Registrar (213) 740-9230.*

COURSE CREDIT/UNIT VALUE
A semester unit is a credit of one hour per week for one semester (15 weeks in length).

COURSE NUMBERING AND CLASSIFICATION
The first digit of the course indicates the year level of the course. 000-preparatory courses; 100-first undergraduate year; 200-second undergraduate year; 300-third and fourth undergraduate years without graduate credit; 400-third and fourth undergraduate years with graduate credit for graduate students; 500-first graduate year; 600-second graduate year; and 700-third graduate year.

GRADING SYSTEM
The following grades are used: A, excellent; B, good; C, fair in undergraduate courses and minimum passing in courses for graduate credit. D, minimum passing in undergraduate courses; and F, failed. Additional grades include CR, credit; NC, no credit; P, pass; and NP, no pass. The following marks are also used: W, withdrawn; IP, in progress; UW, unofficial withdrawal; MG, missing grade; IN, incomplete; and IX, lapsed incomplete.

GRADE POINT AVERAGE (GPA) CATEGORIES/CLASS LEVEL
A system of grade points is used to determine a student's grade point average. Grade points are assigned to grades as follows for each unit in the credit value of a course. A, 4.0 points; A-, 3.7 points; B+, 3.3 points; B, 3.0 points; B-, 2.7 points; C+, 2.3 points; C, 2.0 points; C-, 1.7 points; D+, 1.3 points; D, 1.0 points; D-. 0.7 points; F, 0 points; UW, 0 points; and IX, 0 points. Marks of CR, NC, P, NP, W, IP, MG and IN do not affect a student's grade point average. There are four categories of class level and GPA: Undergraduate, Graduate, Law, and Other. UNDERGRADUATE is comprised of Freshman (less than 32 units earned), Sophomore (32 to 63.9 units earned), Junior (64 to 95.9 units earned) and Senior (at least 96 units earned). GRADUATE is comprised of any coursework attempted while pursuing a master's and/or doctoral degree. LAW is comprised of any coursework attempted while pursuing a Juris Doctor or Master of Laws degree. Other is comprised of any coursework attempted while not admitted to a degree program or coursework not available for degree credit.

CLASS RANK
The University of Southern California does not calculate or support a class rank for its undergraduate students. While most graduate programs do not rank students, requests for graduate student class rankings should be directed to the dean of the particular school in which the graduate degree was earned.

STUDENT GOOD STANDING
A student is considered to be in good standing if they are eligible to register for classes. Disciplinary good standing is determined by the Office of Community Expectations.

TRANSFER CREDIT
Coursework accepted from other institutions is summarized into undergraduate and graduate areas. The summary information includes the number of units and GPA. The transfer institution(s) and dates of attendance do not appear on the USC transcript.

GOULD SCHOOL OF LAW GRADING SYSTEMS
Beginning in Fall 2022, courses are graded numerically from 4.0 to 1.9, with letter-grade equivalents ranging from A to F. The grade equivalents are 4.0 to 3.8 (A); 3.7 to 3.5 (A-); 3.4 to 3.3 (B+); 3.2 to 3.0 (B); 2.9 to 2.7 (B-); 2.6 to 2.5 (C+); 2.4 (C); 2.3 to 2.1 (C-); 2.0 (D); and 1.9 (F).

From Fall 2012 through Spring 2022, courses were graded numerically from 4.4 to 1.9, with letter grade equivalents ranging from A+ to F. The grade equivalents are 4.4 to 4.1 (A+); 4.0 to 3.8 (A); 3.7 to 3.5 (A-); 3.4 to 3.3 (B+); 3.2 to 3.0 (B); 2.9 to 2.7 (B-); 2.6 to 2.5 (C+); 2.4 (C); 2.3 to 2.1 (C-); 2.0 (D); and 1.9 (F).

From Fall 2001 through Spring 2012, courses were graded numerically from 4.4 to 1.9, with letter grade equivalents ranging from A+ to F. The grade equivalents are 4.4 to 4.1 (A+); 4.0 to 3.8 (A); 3.7 to 3.5 (A-); 3.4 to 3.3 (B+); 3.2 to 3.0 (B); 2.9 to 2.7 (B-); 2.6 to 2.5 (C+); 2.4 (C); 2.3 to 2.0 (D); and 1.9 (F).

Prior to Fall 2001, the grading system consisted in numbers in a range from 90 to 65. A grade of 90 was equivalent to highest honors and was very rare; 89 to 85 high honors; 84 to 80, honors; 79 to 70, satisfactory; 69 to 66, unsatisfactory; and 65, failing.

OSTROW SCHOOL OF DENTISTRY GRADING SYSTEM
Students admitted to the Doctor of Dental Surgery program in Fall 1990 or later and students admitted to the International Student Program in Summer 1991 or later, are bound by the University's grading system (excluding plus/minus grades), which is detailed *above* under the heading "GRADING SYSTEM." Academic records for dentistry students who attended prior to the dates listed above are housed independent of the University's central record system. Contact the Ostrow School of Dentistry directly for this earlier academic record information.

KECK SCHOOL OF MEDICINE TRANSCRIPTS
Transcripts for medical students are housed independent of the University's central records system. Contact the School of Medicine directly for this academic record information.

LANGUAGE OF INSTRUCTION
English is the language of instruction at USC. All courses are taught in English with the exception of a few advanced language courses.

ACCREDITATION
The University of Southern California is fully accredited by the Western Association of Schools and Colleges. For additional professional accreditation information, please refer to the latest issue of Accredited Institutions of Postsecondary Education published by the American Council on Postsecondary Accreditation (COPA).

Rev.02/2023

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Madeline Goossen for a position as a clerk in your chambers. Over the last two years, I have come to know Madeline quite well. First, I had the pleasure of having her as a student in my legal-writing class, which is a year-long class with only fifteen students. As part of that class, I personally review multiple assignments written by each student. I am happy to report that Madeline received one of the highest grades in my class because she is an outstanding writer.
Additionally, I got to know Madeline even better during her second year of law school while she was a “writing fellow.” At USC, most of our first-year legal writing classes are taught to part-time instructors, who are paired with a second- or third-year student to assist them. As the Associate Director of Legal Writing, I help train and supervise all the writing fellows. Becoming a writing fellow is a competitive process. We invited Madeline to be a writing fellow because she is not only a great writer but also intelligent, hard-working, organized, responsible, and mature. Also, from watching her interact with other people, I know that she is polite and professional. In short, Madeline is an outstanding student and teaching assistant. I wish we had more students like her.

Lastly, my recommendation is based on both my experience as a professor and my prior career as a practicing lawyer. Before becoming a fulltime faculty member in 2007, I was an Assistant United States Attorney in the Central District of California for seventeen years. During that time, I became familiar with the work performed by judicial law clerks. I am certain that Madeline will be an outstanding clerk. She knows how to thoroughly research a complex legal issue, and write a clear, concise, and complete analysis. Perhaps more important, she exercises independent judgment to make sure that whatever task she is assigned is successfully completed. If I were a judge, I would be happy to hire her. Please feel free to contact me if you have any questions or concerns.

Sincerely,

REBECCA S. LONERGAN

Rebecca Lonergan - rlonergan@law.usc.edu - 213-740-5599

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Madeline Goossen was one of seven students in my intensive writing workshop, Judicial Opinion Writing (Law 873), where I got to know her as a writer and a colleague. I consider it my great good fortune that she is helping me now as a research assistant and will serve this fall as a teaching assistant for another of my courses. Madeline is smart, works hard, and has good judgment and a calm temperament. She has demonstrated her ability to draft insightful and well-organized judicial opinions. She would be an asset to your chambers from day one, and I highly recommend her to you.

Madeline's principal writing projects were to draft and, after receiving comments, to improve a majority opinion in Andy Warhol Foundation v. Goldsmith, and a separate opinion in Mallory v. Norfolk Southern Railway Co.; each case was then-pending in the U.S. Supreme Court. To prepare for drafting these opinions, she edited a published opinion pertinent to the Warhol case (Bleistein v. Donaldson Lithographing Co., 188 U.S. 239 (1903)) that offered many opportunities for stylistic improvement, which she seized with confidence to excellent effect.

Based on her edit of Bleistein and her thoughtful contributions in class and in homework assignments, I had high expectations for Madeline's majority opinion, which she fully met. Her opinion was well-structured and written with a firm judicial voice. What made it outstanding, however, was the original and perceptive way that Madeline reasoned that three questions "emerge," from the statutory provision at issue (17 U.S.C. § 107) and the Court's precedent, that were essential to the resolution of the question presented. Her analysis was both original, in that neither the parties nor the cases had framed the analysis in just this way, and sound, in that these were indeed the key issues that the Court eventually would confront and need to resolve in deciding the case. After providing a carefully reasoned assessment of each question, Madeline's opinion responds respectfully and appropriately to each of the principal arguments on which the losing party chiefly relied. The opinion is concise, well-reasoned, and persuasive.

Madeline wrote her separate opinion in Mallory as a concurrence to the very able majority opinion of a fellow student. While agreeing with the result and much of the reasoning, Madeline devoted her concurrence to an original and interesting assessment of the difficult question of when the Court should overrule, as opposed to merely distinguish, a prior opinion that time and precedent have pushed to the sidelines. This opinion again marked her as an unusually thoughtful writer who sets high standards for herself that she then comfortably meets.
Madeline worked hard not only to write good opinions but to help her classmates write the best opinions that they could. She carefully read her classmates' drafts and consistently offered thoughtful suggestions, both in writing and during class discussions. She is ready to participate in the collaborative environment of a judicial chambers and provide others with valuable assistance.

Finally, I have seen the tremendous contributions that Madeline can make not simply in the classroom but as a research assistant. She is excellent at brainstorming, at providing useful research support, and at following up on a list of tasks. On a personal level, Madeline is good-humored and sincere. I am confident that you will value her contributions and enjoy having her as a colleague in chambers.

Please do not hesitate to contact me if you have any questions.

Very truly yours,
/s/ Mark E. Haddad

Mark E. Haddad
Adjunct Lecturer in Law
USC Gould School of Law
mhaddad@law.usc.edu

From: Laura Perry
Re: Madeline Goossen Recommendation Letter
Date: June 6, 2023

I am currently a judicial law clerk for the Honorable Judge Kim McLane Wardlaw for the Ninth Circuit Court of Appeals. I write to recommend Madeline Goossen for a judicial clerkship in your chambers.

I know Madeline from her time serving as a judicial extern in Judge Wardlaw's chambers during the Fall 2022 semester. I worked closely with Madeline during the four-month course of her externship and served as her direct supervisor. From this experience, I saw first-hand that Madeline has the skills to excel at a judicial clerkship.

Madeline's strong writing and legal analysis skills were apparent from our work together. Madeline drafted a 25-page bench memorandum for a challenging civil rights disability case—a task often performed by judicial law clerks. From Madeline's first draft, it was clear that she had thoroughly and extensively researched the current state of the law, had carefully organized the relevant issues, and had crafted a clear, objective memorandum that served as guide for oral argument preparation.

Throughout the editing process, Madeline was responsive to feedback and eager to learn and improve her writing. We had numerous discussions about the nuances of the issues at play in the case. Madeline articulately explained her positions, asked thoughtful questions, and was able to communicate her reasoning clearly both orally and in writing.

From working with Madeline on this project and others, I also saw first-hand her work ethic and dedication to her externship. Our externs are full-time, and Madeline was also balancing many other responsibilities during her externship including working on Law Review (she later became Editor-in-Chief), taking two law school classes, working as a research assistant to a professor, serving as a teaching assistant for two classes, and serving on the board of two student groups. She was able to not only balance, but also exceed expectations in the many tasks thrown at her as a full-time extern with competing responsibilities.

Most importantly, it was a pleasure to work with Madeline. Madeline is charismatic, has a great sense of humor, and worked as a team player with the other externs and law clerks. We would have lunch together a few times a week,

and Madeline would always make the group laugh. I have no doubt she will be a joy to have around in chambers and will work well with any group of law clerks. Madeline expressed to me numerous times her desire to clerk, and I think her time as an extern has provided her with a head start in her pursuit.

Madeline was a superb extern, and she has all the skills required to be a stellar judicial law clerk. I highly recommend her.

Madeline Lei Momi Goossen

Pasadena, California | madeline.goossen.2024@lawmail.usc.edu |(661) 487-7042

Writing Sample

Attached is a bench memorandum written in the fall of 2022 as part of a judicial externship and under the supervision of a law clerk. This is an early draft of the final bench memorandum and was not directly edited by another person, though the initial outline received verbal feedback. All names, dates, locations, and other key identifying characteristics have been altered to maintain confidentiality.

BENCH MEMORANDUM

TO: Judge Wardlaw
FROM: Madeline Goossen, extern to Judge Wardlaw (supervised by Laura Perry, law clerk to Judge Wardlaw)
RE: *Smith v. Brennan*, No. 00-12345
DATE: Fall 2022

Argument Date:	Fall 2022
Appeal From:	C.D. Cal.
Notice of Appeal:	January 2022 (timely)
Jurisdiction on Appeal:	28 U.S.C. § 1291
Decision on Review:	Grant of Summary Judgment and Judgment in Favor of Defendant
Nature:	Civil
Weight:	5
Recommendation:	**REVERSE AND REMAND**

OVERVIEW

Abigail Smith lives with multiple physical and mental impairments and at the recommendation of her physician, lives with an emotional support dog named Parsnip. In May 2020, Smith and her friends Sasha Grant and Brian Lloyd applied to rent a home owned by Paul Brennan in Capitola, California. Although the rental advertisement stated, "no dogs," Grant and Smith submitted an application and disclosed that their household would include "1 registered support animal (12-year-old Labrador mix)" in addition to the three adults.

Brennan responded to the application restating that he did not allow dogs, "even if service dogs." Smith replied by providing information about Parsnip and clarified that the dog was "a verified emotional support animal covered by the ADA as a reasonable accommodation."

Brennan replied that a dog of Parsnip's weight would not be acceptable, sent a second email stating that he thought Parsnip would be a problem for many other landlords, and refunded Smith and Grant's application fee. Smith responded that she did not expect there to be issues with other landlords as Parsnip was an "emotional support animal."

Smith alleges that Brennan violated the Fair Housing Act ("FHA") and California's Fair Employment and Housing Act ("FEHA") by (1) failing to reasonably accommodate her disability and (2) by making a statement that indicated an impermissible preference or limitation based on disability. She also alleged that Brennan was negligent for participating in unlawful housing discrimination.

In its order granting partial summary judgment as to Smith's reasonable accommodation claim, the district court found that no reasonable jury could find that Brennan should have known of Smith's disability. Then in a bench trial on the briefs, the district court also held that Brennan did not violate the FHA or FEHA, as an ordinary reader would not conclude that Brennan's statements suggested an impressible preference or limitation based on disability.

Smith filed this timely appeal challenging both the district court's order granting summary judgment and its judgment in favor of Brennan.

*I recommend that this Court **REVERSE and REMAND** the district court's grant of summary judgment as to Smith's reasonable accommodation claim, and the district court's finding in favor of Brennan on the impermissible preference or limitation and negligence claims.*

QUESTIONS PRESENTED AND SHORT ANSWERS

1. **Did the district court err in granting summary judgment as to Smith's reasonable accommodation claim on the ground that there was no triable issue of fact as to whether Brennan reasonably should have known of Smith's disability?**

Yes. The district court erred in granting summary judgment as to Smith's reasonable accommodation claim because there is a triable issue as to whether Brennan reasonably should have known of Smith's disability. The Ninth Circuit has yet to publish an opinion directly addressing this issue, but this Court should follow its holding in its memorandum disposition in *Oregon Bureau of Labor and Industries ex rel. Fair Housing Council of Oregon v. Chandler Apartments, LLC*, 702 Fed. Appx. at *547 (9th Cir. July 26, 2017). In *Oregon Bureau*, this Court held that under the FHA, knowledge of a housing applicant's disability status can be actual or constructive and a "prospective tenant who requests accommodation for a service animal *need not affirmatively identify his or her disability* to trigger FHA protection." *Id.* (emphasis added). Grant's use of the phrase "reasonable accommodation" in her request and her references to Parsnip being a "registered support animal" present—at minimum—a genuine issue of material fact as to whether Brennan reasonably should have known of Smith's disability, especially when viewed in the light most favorable to Smith. **Excerpt of Record (ER) 6-7**.

2. **Did the district court err in entering judgment after a bench trial on Smith's claim that Brennan made a statement with respect to the rental of a dwelling that indicated an impermissible preference or limitation based on disability?**

Likely Yes. The district court likely erred in its holding that Brennan's statement did not indicate an impermissible preference or limitation based on disability when he wrote, "[m]y policy has been not to accept dogs, even if service dogs." **ER 3, 53-54**. This Court has yet to address the issue, but opinions of other circuits and decisions of district courts within this Circuit provide persuasive guidance. The consensus among these courts is to use the "ordinary reader" standard which dictates that a "statement violates 42 U.S.C. § 3604(c) if the statement, when heard by an ordinary reader, would conclude that the rule suggests a preference." *Iniestra v. Cliff Warren Invs., Inc.*, 886 F. Supp. 2d 1161, 1169 (C.D. Cal. July 31, 2012) (citation omitted); *see also Johnson v. Birks Props., LLC*, No. 21-CV-01380-GPC-DEB, 2022 WL 104736, at *2 (S.D. Cal. Jan. 11, 2022) (adopting the ordinary reader standard).

In reviewing Brennan's statement, the district court concluded that his preference for renters without dogs, including service dogs, did not mean a preference for renters without a disability, because the connection was "too tenuous." **ER 4**. But a consensus of persuasive case law suggests that an ordinary reader would assume that because support dogs are used *only* by people with disabilities, placing a limitation on support dogs inherently places a limitation on *all* people with disabilities who have support dogs. *See, e.g., Johnson*, No. 21-CV-01380-GPC-DEB, 2022 WL 104736, at *2; *Avakina v. Chandler Apartments, LLC*, No. 6:13-cv-1776-MC, 2015 WL 413813, at * 5 (D. Or. Jan. 30, 2015), *sub nom Or. Bureau of Lab. and Indus. ex rel. Fair Hous. Council of Or. v. Chandler Apartments, LLC*, 702 Fed. Appx. at *547 (9th Cir. July 26, 2017). Brennan's admitted understanding of the Americans with Disabilities Act ("ADA") and the role of service dogs could also prove an intent to discriminate that would violate Section 3604(c). **ER 18, 25**. Though this is a close issue which lacks direct instruction from binding case law, the implication of finding that Brennan's statement did not indicate an impermissible preference or

limitation would be contrary to express provisions of the FHA which require landlords to make reasonable accommodations for support animals. Allowing such statements in this context could sanction landlords to discriminate against protected classes in housing and rentals and further limit housing options for people with disabilities.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

Abigail Smith lives with multiple physical and mental impairments including major depressive disorder, post-traumatic stress disorder, and fibromyalgia. **Excerpt of Record** (**ER) 2, 6**. Since 2016, at the recommendation of her physician, Smith has lived with an emotional support dog named Parsnip, a twelve-year-old Labrador mix, who helps alleviate Smith's symptoms. **ER 67**.

In April 2020, Smith and her friends Sasha Grant and Brian Llyod began searching for a home to rent in Capitola, California. **ER 70**. Smith and Grant found an advertisement for an available property and Grant contacted the owner, Paul Brennan, who invited them to apply and emailed Grant an application form. ***Id.*** The rental advertisement stated, "no dogs," but Grant and Smith submitted an application through email on May 25 with the thirty-dollar fee and disclosed that their household would include "1 registered support animal (12-year-old Labrador mix)" in addition to the three adults. **ER 6, 58**.

Brennan responded to the application via email and requested additional information about Grant's financial situation and Parsnip. **ER 7, 52-53** Brennan's email stated: "I received the documents you sent, and there are a few questions, issues. First is the dog. My policy has been not to accept dogs, even if service dogs. What is the weight of the dog?" ***Id.***

Grant answered in an email on May 27: "Parsnip is an elderly 50-lb Labrador mix. She does not bark and has no destructive tendencies or behaviors. She's a verified emotional support animal covered by the ADA[1] as a reasonable accommodation. I'd be happy to provide references,

[1] Grant incorrectly cited the ADA as requiring landlords to provide reasonable accommodations. In the housing context, it is the Fair Housing Act that imposes such a duty. This error is not fatal to Smith's claims because the FHA has a broader definition of "support animal" than the ADA, and unlike the ADA, the FHA includes protections for emotional support animals as well as specially trained service animals.

as well as an additional deposit and/or additional pet rent for her. Please do let me know if I missed anything or if there's more I can provide!" **ER 7, 53**.

Later that day, Brennan replied: "I can review your financial documents, but a 50 pound dog will not be acceptable....it does say that in the ad. I can keep your application on file, and will be refunding your appl. fee when I make a final decision." **ER 7, 54**. He sent a second email within the hour stating: "I think your dog will be a problem with a lot of landlords. I am sure you are attached to her, but at 12 years her life expectancy is limited. Older animals also tend to have problems like urinary incontinence. Is there someone who can take her for you?" ***Id.***

Grant responded: "Thanks for the follow-up! I understand your position. While I appreciate your concern about other landlords, I don't anticipate the dog being an issue elsewhere since she is, as I mentioned, an emotional support animal. Support and service animals are covered by federal ADA laws protecting reasonable accommodation requirements; it is illegal to discriminate against a prospective tenant based on their need for a support or service animal, a law that I anticipate most other landlords will respect. I wish you the best of luck with whatever tenant you do select." **ER 7, 55**.

Later that afternoon, Brennan rejected Smith and Grant's application and refunded the fee. **ER 7, 63-64**. Smith filed this lawsuit in July and one week later, Brennan emailed Grant a link to a webpage on service animals and the Americans with Disabilities Act ("ADA") (https://www.ada.gov/service_animals_2010.htm). **ER 6-7, 57**.

In preparation for trial, Brennan was deposed in May 2021 and stated that he was a practicing physician and has owned multiple rental properties for about "thirty-five years." **ER 16**. When asked about his understanding of the term "service animal" and "emotional support

animal," Brennan replied: "Well, my understanding, you know, I'm not familiar with the nuances of the law, is that under certain circumstances that a person is permitted to have an animal with them." **ER 17**. He clarified that his understanding of a service dog[2] was "basically like a blind dog that, you know, a blind person might have to assist them," but that he did not have a "specific understanding of that terminology" when Grant wrote that Parsnip was a "verified emotional support animal covered by the ADA as a reasonable accommodation." **ER 25**. He also stated that he did not recall reading or sending the ADA link on service animals that was emailed to Grant from Brennan's account. **ER 30**.

II. Legal Background

A. Fair Housing Act

Titles VIII and IX of the Civil Rights Act of 1968, more commonly known as the Fair Housing Act ("FHA") and subsequent Fair Housing Act Amendments, make it unlawful "to discriminate in the sale or rental … of a dwelling to any buyer or renter because of a handicap." 42 U.S.C. § 3604(f)(1). Discrimination under this section includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." *Id.* § 3604(f)(3)(B).

While a reasonable accommodation inquiry is "highly fact specific, requiring case-by-case determination," *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997) (citation omitted), a plaintiff must prove the following elements: (1) that the plaintiff or their associate has a disability within the meaning of 42 U.S.C. § 3602(h); (2) that the

[2] Brennan was asked about his understanding of this specific term because he used the phrase "service dog" in his email to Grant, however, Grant only used the terms "support animal" and "verified emotional support animal" in her emails.

defendant knew or should reasonably be expected to have known of the disability; (3) that accommodation may be necessary to afford the disabled person an equal opportunity to use and enjoy the dwelling; (4) that the requested accommodation is reasonable; and (5) that defendant refused to make the requested accommodation, *Dubois v. Ass'n of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006); *see also Giebler v. M & B Assocs.*, 343 F.3d 1143, 1147 (9th Cir. 2003).

Under the FHA, it is also unlawful to: "make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on … handicap … or an intention to make any such preference, limitation, or discrimination." 42 U.S.C. § 3604(c).

B. California Fair Employment and Housing Act

California also prohibits housing discrimination based on disability in the California Fair Employment and Housing Act ("FEHA"). Section 12955(c) makes it a violation of the FEHA to: **"**make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on … disability or an intention to make that preference, limitation, or discrimination." *Cal. Gov. Code* § 12955 (c).

The FEHA provides "equivalent, if not greater protections" for victims of housing discrimination than the FHA. *Pack v. Fort Washington II*, 689 F. Supp. 2d 1237, 1247 (E.D. Cal. 2009); *see Cal. Gov. Code § 12955.6* ("This part may be construed to afford greater rights and remedies to an aggrieved person than those afforded by federal law and other state laws.").

C. Americans with Disabilities Act

The ADA prohibits "discrimination against individuals with disabilities," imposes accessibility requirements in public accommodations, and requires employers to provide "reasonable accommodations" for employees with disabilities. 42 U.S.C. § 12101 et seq.[3]

III. Procedural History

Smith filed a lawsuit against Brennan—both as an individual and as trustee of the Brennan Trust—in the United States District Court for the Central District of California in August 2020. **ER 6**. She alleged that Brennan discriminated against her because of her disability in violation of the FHA and FEHA and that Brennan was negligent for participating in unlawful housing discrimination. **ER 8**.

A. The District Court Granted in Part and Denied in Part Bresler's Motion for Summary Judgment

The district court granted in part and denied in part Bresler's motion for summary judgment, finding that "[Smith's] evidence—the rental application and the email correspondence between [Brennan] and Grant—would not lead a reasonable jury to find that [Brennan] should have known of [Smith's] handicap." **ER 9, 11**. In its determination, the district court concluded that a reader could only be left with "[a]ssumption and speculation" as to Smith's disability status and granted summary judgment on the claim that Brennan failed to reasonably accommodate Smith's disability. **ER 9**. The district court denied Brennan's motions for

[3] In her emails, Gailey described Tinkerbell as "a verified emotional support animal covered by the ADA as a reasonable accommodation." **ER 7, 53**. She should have instead cited to the FHA as requiring reasonable accommodations because the FHA has a broader definition of "assistance animal" than the ADA which includes emotional support dogs and animals not trained to the level of ADA certification as a service animal. U.S. Dep't of Hous. and Urb. Dev, FHEO Notice: FHEO-2020-01 at 5 (defining assistance animals covered by the FHA as "(1) service animals, and (2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities.").

summary judgment as to the impermissible preference and negligence claims reasoning that there remained a "genuine dispute." **ER 10-11**.

B. Judgment in Favor of Brennan After a Bench Trial on the Briefs

In a bench trial on the briefs, the district court found that Brennan did not make a statement that indicated an impermissible preference or limitation based on disability in violation of the FHA (42 U.S.C. § 3604(c)) or FEHA (Cal. Gov. Code § 12955(c)) because an "ordinary reader would not readily assume that by preferring a renter without a dog, [Brennan] also implicitly suggest[ed] that he prefers a renter without a handicap." **ER 4**. The district court also found that Brennan's follow-up question regarding the dog's weight would indicate to an ordinary reader that he would rent to someone with a dog and that assuming otherwise would be "too tenuous." ***Id.*** The district court also held that because Smith failed to prove her FHA and FEHA claims, she could not prove negligence. ***Id.*** Smith timely filed an appeal of the district court's judgments.

STANDARD OF REVIEW

"We review de novo the district court's grant of summary judgment." *Oswalt v. Resolute Indus., Inc.*, 642 F.3d 856, 859 (9th Cir. 2014). Viewing the evidence in the light most favorable to the non-moving party, the court then determines whether there are any genuine issues of material fact and whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see also Demarest v. City of Vallejo, Cal.*, 44 F.4th 1209, 1213 (9th Cir. 2022) (holding that when an "appeal challenges an order granting summary judgment to the defendants, we must credit [plaintiff's] evidence as true and draw all reasonable inferences in [plaintiff's] favor.").

After a bench trial, findings of fact are reviewed for *clear error*, and conclusions of law are reviewed *de novo*. *Oswalt*, 642 F.3d at 859-60. "[M]ixed questions of law and fact" are also

"review[ed] *de novo*." *C. L. v. Del Amo Hosp., Inc.*, 992 F.3d 901, 909 (9th Cir. 2021). Mixed questions of law and fact exist "when there is no dispute as to the facts, the rule of law is undisputed, and the question is whether the facts satisfy the legal rule." *Lim v. City of Long Beach*, 217 F.3d 1050, 1054 (2000); *see also Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982); *U.S. Bank N.A. ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 967 (2018).

DISCUSSION

Smith argues that the district court erred in holding that under the relevant FHA sections no reasonable jury could conclude that Brennan knew or reasonably should have known of her disability status, **Bl. Br 15**, and that Brennan's policy "not to accept dogs, even if service dogs" did not indicate a preference or limitation against people with a disability, **Bl. Br. 27**.

A review of the relevant—though largely nonbinding—case law suggests that Brennan had at minimum, constructive knowledge of Smith's disability status, and that his statement not to accept dogs likely violated the FHA given the context and his intent. Therefore, I recommend that this Court **REVERSE and REMAND** both the district court's grant of summary judgment as to Smith's reasonable accommodation claim and the district court's judgment in favor of Brennan on the impermissible preference or limitation claim.

I. This Court Has Jurisdiction to Review the District Court's Grant of Brennan's Motion for Summary Judgment and Judgment in Favor of Brennan

The district court had jurisdiction over Smith's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343 and supplemental jurisdiction over Smith's state law claim pursuant to 28 U.S.C. § 1367. This Court has jurisdiction over appeals from all final decisions of the district court under 28 U.S.C. § 1291.

II. There is a Triable Question of Fact as to Whether Brennan Reasonably Should Have Known of Smith's Disability

Under the FHA, it is unlawful "to discriminate in the sale or rental … of a dwelling to any buyer or renter because of a handicap." 42 § U.S.C. 3604(f)(1). Discrimination under this section includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." *Id.* § 3604(f)(3)(B). While a reasonable accommodation inquiry is "highly fact specific, requiring case-by-case determination," *Cal. Mobile Home Park*, 107 F.3d at 1380 (citations omitted), a plaintiff must prove the following elements: (1) that the plaintiff or their associate has a disability within the meaning of 42 U.S.C. § 3602(h); (2) **that the defendant knew or should reasonably be expected to have known of the disability**; (3) that accommodation may be necessary to afford the disabled person an equal opportunity to use and enjoy the dwelling; (4) that the requested accommodation is reasonable; and (5) that defendant refused to make the requested accommodation. *Dubois*, 453 F.3d at 1179 (emphasis added); *see also Giebler v. M & B Assocs.*, 343 F.3d 1143, 1147 (9th Cir. 2003).

Brennan challenged only the second element, so the sole question before the district court, and now before this Court, is whether there is a material question of fact as to whether Brennan had or should have had knowledge of Smith's disability. **ER 9**.

Smith argues that Brennan's years of rental experience, the rental application, and email exchanges between Grant and Brennan would lead a reasonable jury to conclude that Brennan knew or at least reasonably should have known of Smith's disability status. **Bl. Br 15**. She argues that the district court misinterpreted the statute as requiring actual knowledge of an applicant's disability rather than constructive knowledge, and that references to Parsnip being a "registered support animal" and "verified emotional support animal" were enough for a

reasonable jury to find that Brennan should have known of Smith's disability. **Bl. Br 17-18**. Smith also points to Brennan's use of the phrase "service dog" in his emails; his admitted awareness of the ADA in his deposition; and Grant's mentions in her emails of the "ADA," "reasonable accommodations," and "discrimination," as further evidence that there is at least a triable issue as to Brennan's knowledge of Smith's disability status. **Bl. Br. 17**.

Smith additionally argues that the district court failed to consider that Brennan did not engage in an "interactive process" with Grant or inquire into Grant or Smith's disability statuses or need for a support dog. **Bl. Br. 12.** She argus that Brennan's failure to engage in this process is contrary to guidance from the Department of Justice and the Department of Housing and Urban Development, and that the district court should have considered this when analyzing Smith's reasonable accommodation claim. **Bl. Br. 12-13.**

Brennan contends that he did not know and should not have reasonably been expected to know that Smith had a disability because he was never explicitly informed by Smith or Grant that Smith had a disability. **Red Br. 10**. He maintains that he never spoke or communicated with Smith, that he was never informed that Smith herself had a disability, and that he was not told that the support dog would be for Smith or either of the other two rental applicants. **Red Br. 12**. He argues that the information he was given from Grant's emails "merely supports an assumption that a person who intends to reside in the home with the dog suffers a handicap," but does not lead to a conclusion that Smith herself had a disability or that her disability was such that required a reasonable accommodation for a support dog. **Red Br. 13**.

As a threshold matter, Brennan's argument implies that Smith lacks standing to bring this claim because he never directly communicated with Smith. Nonetheless, Smith has standing to bring these claims as the FHA permits any "aggrieved person" to bring a housing discrimination

suit, 42 U.S.C. § 3613(a), defining an "aggrieved person" as anyone who "claims to have been injured by a discriminatory housing practice" or "believes that such person will be injured by a discriminatory housing practice that is about to occur." *Id.* § 3602(i). The Supreme Court has repeatedly held that the FHA's definition reflects a "congressional intention to define standing as broadly as is permitted by Article III of the Constitution." *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1303 (2017) (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972)). Under the FHA, a plaintiff "need not allege that he or she was a victim of discrimination," but only that they suffered "a distinct and palpable injury" from the discriminatory conduct. *Harris v. Itzhaki*, 183 F.3d 1043, 1049-50 (9th Cir. 1999). Here, Smith suffered such an injury when Brennan denied her and Grant's housing application because of Smith's support animal. Furthermore, the first element of a claim for a refusal to make a reasonable accommodation requires that "the plaintiff **or his associate** is handicapped within the meaning of 42 U.S.C. § 3602(h)." *Dubois*, 453 F.3d at 1179 (emphasis added). Here, Smith could also be considered Grant's "associate" under § 3602(h). For these reasons, Smith has standing to bring these claims.

Additionally, Smith is correct in maintaining that the district court erred in its application of the "knew or should have known" standard under the FHA. Though it is clear that Brennan did not have actual knowledge of Smith's disability status, there is at minimum a material question of fact as to whether he had constructive knowledge of her disability. While there is a lack of Ninth Circuit published case law in this area, an unpublished memorandum disposition from this Court and opinions from other circuits are particularly helpful in coming to this

conclusion. Additionally, guidance from the U.S. Department of Housing and Urban Development ("HUD") is instructive.[4]

This Court has held, in an unpublished memorandum disposition, that under the FHA, knowledge of a housing applicant's disability status can be actual or constructive and a "prospective tenant who requests accommodation[s] for a service animal need **not** affirmatively identify his or her disability to trigger FHA protection." *Or. Bureau*, 702 Fed. Appx. at *547 (emphasis added); *see also* Joint Statement of the Dep't of Hous. and Urb. Dev. and the Dep't of Just., Reasonable Accommodations under the Fair Housing Act at 10 (May 17, 2004). HUD guidelines state that "it is not necessary to submit a written request or to use the words 'reasonable accommodation,' 'assistance animal,' or any other special words to request a reasonable accommodation under the FHA," and that accommodation requests can be made by others on behalf of the disabled individual. U.S. Dep't of Hous. and Urb. Dev, FHEO Notice: FHEO-2020-01 at 7-8. Here, although Smith never affirmatively identified her disability, Grant's use of the terms "registered support animal," "reasonable accommodations" and "discrimination," and Brennan's use of the phrase "service dog" and the link to the ADA website in his emails raise a triable issue as to whether Brennan reasonably should have known of Smith's disability status.

Furthermore, the "burden to inquire further [regarding a reasonable accommodation request] is on the landlord, not the prospective tenant."[5] *Avakina v. Chandler Apartments, LLC*, No. 6:13-cv-1776-MC, 2015 WL 413813, at * 5 (D. Or. Jan. 30, 2015), *sub nom Or. Bureau of*

[4] Of note, HUD's guidance is entitled to deference. *See Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-845 (1984); *Meyer v. Holley*, 537 U.S. 280, 287-88 (2003) (holding that HUD is the "federal agency primarily charged with the implementation and administration" of the FHA, and that courts "ordinarily defer to an administering agency's reasonable interpretation of a statute").

[5] This "inquiry burden" is identical to the "interactive process" that Smith describes in her brief.

Lab. and Indus. ex rel. Fair Hous. Council of Or. v. Chandler Apartments, LLC, 702 Fed. Appx. at *547 (9th Cir. July 26, 2017). Other circuits have held that it is "'incumbent upon' a skeptical defendant 'to request documentation or open a dialogue' rather than immediately refusing a requested accommodation.'" *Bhogaita v. Altamonte Heights Condominium Ass'n.*, 765 F.3d 1277, 1287 (11th Cir. 2014) (quoting *Jankowski Lee & Assocs. v. Cisneros,* 91 F.3d 891, 895 (7th Cir. 1996)); *see also* U.S. Dep't of Hous. and Urb. Dev., FHEO Notice: FHEO-2020-01 at 8-10. Here, Brennan failed to engage in this inquiry when he denied Grant's housing application without any further questioning or inquiry because the application disclosed that the household would include a "registered support animal."

Though not binding precedent on the Ninth Circuit, this Court's unpublished disposition in *Oregon Bureau* is factually similar to the issues here and persuasive in its analysis. In this case, the manager of an apartment complex violated the FHA by refusing to grant reasonable disability accommodations to "tester"[6] rental applicants with service animals. *Or. Bureau*, 702 Fed. Appx. at *547. The building managers argued that there was "no reason to know" that the testers were disabled, but the court found that they reasonably should have known that the testers were requesting disability accommodations. *Id.* Statements from the testers such as, "[j]ust so you know, I have a therapy animal," or "I have an assistance dog," in addition to the manager's acknowledgement that he understood that the requests related to service animals and not pets, showed that the building managers reasonably should have known of the testers' disability statuses. *Id.* When granting summary judgment to the rental applicants, the district court held, and the Ninth Circuit affirmed, that "[t]he testers' statements certainly put [the manager] on

[6] FHA "testers" contact apartment complexes to inquire about vacancies despite having no interest in renting an apartment. Instead, they attempt to determine if the landlord is violating the FHA. "The valid use of testers in FHA cases is settled law." *Avakina*, No. 6:13-cv-1776-MC, 2015 WL 413813, at * 3.

notice that the testers were requesting reasonable accommodations for their assistance animals." *Avakina*, No. 6:13-cv-1776-MC, 2015 WL 413813, at * 5.[7]

Here, the district court erred by not citing to nor relying on *Oregon Bureau* in its grant of Brennan's motion for summary judgment. Many of the statements made by the testers in *Oregon Bureau* such as "I have a therapy animal" or "I have an assistance dog" are nearly identical to the statements in Grant and Smith's housing application and emails. *See, e.g.*, **ER 7, 55** (Grant's email stating "[The dog] is, as I mentioned, an emotional support animal.").

Additionally, many district courts in this Circuit have also found that a defendant reasonably should have known of a plaintiff's disability in similar circumstances. For instance, the district court's analysis in *Book v. Hunter*, No. 1:12-cv-00404-CL, 2013 WL 1193865, at *4 (D. Or. Mar. 21, 2013), is instructive. In *Book*, a landlord violated Section 3604(f)(3)(B) of the FHA by refusing to make a reasonable accommodation to her complex's "no pets policy" for a disabled applicant when the applicant submitted a doctor's note attesting to her need for a "companion animal to assist her." *Id.* at *1, *5. The court reasoned that the applicant had sufficiently informed the landlord of her disability and her request for an accommodation "such that defendants were aware or should have been aware of her handicap and her request." *Id.* at *4. Similarly, in *Smith v. Powdrill*, No. CV 12-06388, 2013 WL 5786586, at * 6 (C.D. Cal. Oct. 28, 2013), a landlord violated the FHA by failing to make a reasonable accommodation for an existing tenant when the tenant informed the landlord that she had "a companion animal necessary to address her disabilities." *Id.* at *1-2. The district court concluded that the "undisputed facts show that defendants knew, or should have known, of Plaintiff's disability"

[7] The district court case name is *Avakina v. Chandler Apartments, LLC*, No. 6:13-cv-1776-MC, 2015 WL 413813 (D. Or. Jan. 30, 2015), while the Ninth Circuit case name is *Oregon Bureau of Labor and Industries ex rel. Fair Housing Council of Oregon v. Chandler Apartments, LLC*, 702 Fed. Appx. (9th Cir. July 26, 2017).

considering that the landlord was informed that the tenant was attending "mental therapy" and that the dog provided "emotional support" according to the tenant's doctor. *Id.* at *5.

This Court's disposition in *Oregon Bureau* coupled with the above consensus of persuasive authority establishes that Brennan reasonably should have known of Smith's disability status. Furthermore, in this fact-intensive inquiry,[8] Grant's repeated use of phrases such as "registered support animal," "verified emotional support animal," and "reasonable accommodation" presents, at minimum, a genuine dispute as to Brennan's knowledge of Smith's disability. **Bl. Br 17-18**. The standards expressed by HUD, other circuits, an unpublished disposition from this Court, and persuasive district court cases from this Circuit all indicate that Smith made a reasonable accommodation request, and that Brennan was at least constructively put "on notice" of her disability status. Significantly, Brennan attested to his familiarity with the ADA and his understanding of "service dogs" in his deposition. His use of the phrase "service dogs" in his response email to Grant further demonstrates that he was aware that she was making an accommodation request for her household based on a disability, and not requesting that she be allowed a pet.

In his answering brief, Brennan adopts the reasoning of the district court and relies almost exclusively on the argument that the emails "merely support an assumption that a person who intends to reside in the home with the dog suffers a handicap," **Red Br. 13**, but that Brennan would not have known specifically of Smith's disability. As explained above, this argument is flawed because it legally does not matter whether the support dog was Smith's or Grant's or which of them were disabled because the FHA prohibits associational discrimination. Therefore,

[8] Because reasonable accommodation claims are fact-intensive inquiries, Smith makes a strong argument in her Reply Brief that this issue should not have been decided on summary judgment at all and should have instead gone to a jury. **Gr. Br. 8**.

Smith, or Grant as her representative, did not need to affirmatively state that Smith was disabled and the tenant who needed the support dog.

Though not determinative, the district court also did not consider the fact that Brennan failed to engage in an interactive process with Grant to determine if one of the applicants was disabled and if the request was reasonable as suggested by HUD guidelines, to which this Court gives deference. Grant offered to submit references for Parsnip and provide any additional information, but Brennan rejected the application without any follow-up questions besides asking the dog's weight.[9] Based on the email exchange and Brennan's acknowledgement that the accommodation request was for a "service dog," a reasonable jury could find that Brennan knew or should have reasonably known of Smith's disability status. The district court erred in granting summary judgment on this issue and should be reversed and remanded.

III. Brennan's Statement Likely Indicated an Impermissible Preference or Limitation Based on Disability

Additionally, Smith argues that the district court erred in granting judgment in favor of Brennan on the question of whether his statement "not to accept dogs, even if service dogs" is an impermissible preference or limitation based on disability in violation of the FHA.

A. This Court Should Apply the *De Novo* Standard of Review to the District Court's Judgment on Smith's Impermissibly Preference of Limitation Claim

The parties disagree as to the appropriate standard of review to apply in evaluating this claim. Brennan argues that the district court's conclusions were findings of fact and should therefore be reviewed for *clear error*. **Red Br. 15**. Although it is unclear which standard Smith

[9] Brennan's inquiry into the weight of the dog does not satisfy the requirement to engage in an interactive process because "housing providers may not limit the breed or size of a dog used as a service or support animal." U.S. Dep't of Hous. and Urb. Dev, FHEO Notice: FHEO-2020-01 at 14.

is asking this Court to apply, she seems to argue that this Court should review the district court's conclusions *de novo* as they were conclusions of law. **Bl. Br. 10**.

Under Ninth Circuit precedent, this Court should review the district court's bench trial judgment *de novo* because the specific conclusion under review—regarding the impermissible preference or limitation, and negligence claims—is a mixed question of fact and law. The *de novo* standard is appropriate here because the parties do not dispute the facts or the rule of law to be applied and the question under review is solely whether the facts satisfy the legal rule. *Lim*, 217 F.3d at 1054 (defining mixed questions as "when there is no dispute as to the facts, the rule of law is undisputed, and the question is whether the facts satisfy the legal rule."); *see also Del Amo Hosp., Inc.*, 992 F.3d at 909.

B. This Court Should Adopt the Ordinary Reader Standard in Analyzing Section 3604(c) Claims

Under Section 3604(c) of the Fair Housing Act, it is unlawful:

> To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any *preference*, *limitation*, or discrimination based on … handicap … or an intention to make any such preference, limitation, or discrimination. 42 § U.S.C. 3604(c) (emphasis added).

The Ninth Circuit has yet to adopt a framework for addressing Section 3604(c) claims, but other circuits, and district courts within the Ninth Circuit use an "ordinary reader" standard. Therefore, I think that is the appropriate standard for this Court to apply.

Significantly, other circuits and district courts in this Circuit have found, and both parties agree, that Section 3604(c) claims do not require a showing of discriminatory intent. *Iniestra*, 886 F. Supp. 2d at 1169 (citing *Jancik v. Dep't of Hous. and Urb. Dev.*, 44 F.3d 553, 556 (7th Cir. 1995)); *see also Pack*, 689 F. Supp. 2d at 1245. A statement is shown to violate Section 3604(c) in one of two ways: (1) the statement is discriminatory on its face, meaning that "the

defendant made the statement with the actual intent to discriminate," or (2) an "ordinary listener" would "naturally interpret the statement as indicating a preference for or against a protected group or as indicating some other limitation or discrimination against a protected group." *Fair Hous. Res. Center, Inc. v. DJM's 4 Reasons LTD.*, 499 Fed. Appx. 414, 415 (6th Cir. 2012). An "ordinary reader" standard applies when statements or postings are not facially discriminatory to determine if the publication presents an "impermissible preference" or limitation. *See Iniestra*, 886 F. Supp. 2d at 1169.

To prove a Section 3604(c) violation based on an alleged statement that is not facially discriminatory, a plaintiff must present evidence that (1) the defendant made the statement, (2) the statement was made with respect to the rental of a dwelling, and (3) the statement indicated a preference, limitation, or discrimination on a prohibited basis. *White v. Dep't of Hous. and Urb. Dev.*, 475 F.3d 898, 904 (7th Cir. 2007). The defendant's statement need not indicate a complete ban, and even a suggestion that a "particular [protected group] is preferred or dispreferred for the housing in question" violates this section of the FHA. *Jancik*, 44 F.3d at 556 (quoting *Ragin v. New York Times Co.*, 923 F.2d 995, 999 (2d Cir. 1991)). Furthermore, referential statements or advertisements are not required to "jump out at the reader with their offending message," because the statute is violated by "any ad that would discourage an ordinary reader of a particular [protected group] from answering it."[10] *Id.* at 556 (quoting *Ragin*, 923 F.2d at 999-1000).

The ordinary reader inquiry instead focuses on "whether the alleged statement at issue would suggest a preference to an 'ordinary reader or listener.'" *Pack*, 689 F. Supp. 2d at 1245; *see also Iniestra*, 886 F. Supp. 2d at 1169 (citing *U.S. v. Hunter*, 459 F.2d 205, 215 (4th Cir.

[10] *Jancik* specifically discussed rental advertisements that violate the FHA, but the same logic applies to written statements in connection with renting, as the language of the FHA does not make a distinction between "any notice, statement, or advertisement" that is made, printed, or published. 42 U.S.C. § 3604(c).

1972)). The ordinary reader is not "the most suspicious nor the most insensitive of our citizenry," and context and intent should play a role in the analysis when a statement is not "facially discriminatory," but still indicates an impermissible limitation or preference. *Soules v. Dep't of Hous. and Urb. Dev.*, 967 F.2d 817, 824-25 (2d Cir. 1992) (citing *Ragin*, 923 F.2d at 999).

C. Brennan Likely Expressed an Impermissible Preference or Limitation in Violation of the Fair Housing Act

Smith argues that Brennan's policy "not to accept dogs, even if service dogs" indicates a preference or limitation against people with disabilities and is discriminatory on its face. **Bl. Br. 27**. She maintains that a "service dog" is a legal term of art that is "***exclusively and uniquely associated with individuals with disabilities***" and that Brennan's statement therefore necessarily reflects an impermissible preference and is facially discriminatory. ***Id.*** (emphasis in original). She goes on to argue that because the statement was facially discriminatory, the district court erred in considering Brennan's intent and the context in which the statement was made, but concludes that even if these factors were considered, Brennan's statement would be discriminatory. **Bl. Br. 30**.

In the alternative, Smith also argues that Brennan's statement is discriminatory under the ordinary reader standard. She cites Brennan's deposition in which he stated that his policy not to accept service dogs included guide dogs for blind people as evidence of his subject intent, **ER 26**, and that his follow-up question in the email regarding Tinkerbell's weight is irrelevant to "curing" Brennan's statement because housing providers cannot reject a reasonable accommodation request because of the breed or size of a service animal. **Bl. Br. 32-33**. She further argues that the statement was made in the process of reviewing a rental application and that Grant's emails with language like "reasonable accommodation" and "verified emotional

support animal" further proves that in this context, an ordinary reader would find Brennan's policy and statement discriminatory. **Bl. Br. 34-35**.

Brennan's argument, which the district court adopted, is that his statement indicated a preference for renters without dogs, but not necessarily for renters without disabilities. **Red Br. 17**. He argues that an ordinary reader would not "readily assume that by preferring a renter without a dog, [he] also implicitly suggested that he prefers a renter without a handicap." ***Id.*** Brennan points to the district court's conclusion that no reasonable jury could find that he should have known of Smith's disability as further proof that the context in which the statement was made does not suggest that the statement was discriminatory and that his follow-up questions regarding Parsnip's weight indicate that he "would consider renting to someone with a dog, including a service dog." **Red Br. 17-18**.

Because it is undisputed that Brennan wrote the email and that the expressed pet policy was in reference to the rental of a dwelling, the sole issue before this Court is whether Brennan's policy "not to accept dogs, even if service dogs" indicated a preference, limitation, or discrimination based on disability to an ordinary reader.

The Ninth Circuit has yet to address this question in this context and as such, this Court should rely on a consensus of persuasive case law in reaching its conclusion. In particular, I recommend that the Court follow the reasoning in *Johnson v. Birks Properties, LLC*, No. 21-CV-01380-GPC-DEB, 2022 WL 104736, at *2 (S.D. Cal. Jan. 11, 2022).[11] In *Johnson*, a landlord decided not to renew the lease of a tenant after she informed the landlord that she would be living with an emotional support dog. *Id.* at *1. The landlord stated: "When your lease comes

[11] The district court's decision in *Johnson* addresses a motion for summary judgment, and the case ultimately settled out of court. It is, however, one of the most on-point cases in this Circuit addressing Section 3604(c) cases with support animals.

back around, I'm not going to want a dog on the property. I don't want animals on my property." *Id.* The court denied the landlord's motion for summary judgment under the ordinary reader standard because the statement "read in context, ignores Plaintiff's documented medical condition and need for an accommodation" and "plausibly express[es] a preference against or limitation on those residents who rely on ESAs (emotional support animals)." *Id.*

Additionally, *Avakina v. Chandler Apartments, LLC*, No. 6:13-cv-1776-MC, 2015 WL 413813, at * 5 (D. Or. Jan. 30, 2015), *sub nom Oregon Bureau of Labor and Industries ex rel. Fair Housing Council of Oregon v. Chandler Apartments, LLC*, 702 Fed. Appx. at *547 (9th Cir. July 26, 2017), is also persuasive in its analysis and conclusions on a Section 3604(c) claim.[12] I discussed the facts of *Avakina* when discussing the appellate decision in *Oregon Bureau* above. In *Avakina*, the district court found that a rental manager's statement that "the owner does not want any animals in the building, including service animals" in response to tester applicants stating that they had a "therapy animal" or "assistance dog" violated the FHA. No. 6:13-cv-1776-MC, 2015 WL 413813, at * 1-2, 5. Though the court blends its analysis of the manager's statement under Section 3604(c) and the reasonable accommodation claim, it concluded that the apartment manager's statement that pets were not permitted was discrimination based on disability because the applicants' preceding statements "put [defendant] on notice that the testers were requesting reasonable accommodations for their assistance animals." *Id.* at * 5. The *Avakina* court's determination that the statement was discriminatory suggests that it found the statement was also an impermissible preference under Section 3604(c) of the FHA. Another district court within this Circuit then used the reasoning in *Avakina* to determine that actions

[12] Though it is unclear whether the court in *Avakina*, No. 6:13-cv-1776-MC, 2015 WL 413813, applied an ordinary reader standard, its holding and reasoning support such an assumption, and it mirrors the court's reasoning in *Johnson*, No. 21-CV-01380-GPC-DEB, 2022 WL 104736, at *2.

prohibited under Section 3604(c) include "using words or phrases which convey that dwellings are not available to a particular group of persons because of a handicap and other expressions that 'indicate' a preference or a limitation on any renter because of handicap." *Elliott v. Versa CIC, L.P.*, No. 16-cv-0288-BAS-AGS, 2019 WL 414499, at *8.

I think this Court should follow the reasoning of the district courts within this Circuit to find that Brennan's statement that his "policy has been not to accept dogs, even if service dogs" violates Section 3604(c) of the FHA because the statement indicates a preference for renters without service dogs which in turn is a limitation on renters with disabilities. Significantly, service and support dogs are *exclusively* used by those with disabilities to "do work, perform tasks, assist, and/or provide therapeutic emotional support." FHEO Notice: FHEO-2020-01 at 3. As support animals and people with disabilities are intrinsically linked in this way, an ordinary reader would interpret Brennan's statement to be both a preference and limitation based on a protected group in violation of the FHA.

First, the district court likely erred in its conclusion of law that Brennan's statement was not discriminatory on its face. This conclusion warranted further analysis as the statement is arguably discriminatory on its face because it is directly counter to express provisions of the FHA which mandate that landlords make reasonable accommodations for tenants with disabilities who require the assistance of a support animal. Given Brennan's understanding of service animals and that he reasonably should have known of Smith's disability status, his statement can reasonably be understood to have been made with the "actual intent to discriminate." *Fair Hous. Res. Center, Inc.*, 499 Fed. Appx. at 415.

Second, if the statement is not discriminatory on its face, the district court still likely erred in its conclusion that Brennan's statement is not impermissible under an ordinary reader

standard because his statement reasonably indicates a preference for renters who do not require service or support dogs. The district court based its reasoning on the argument that although Brennan's "statement certainly indicates a preference for renters without dogs," his "statement does not necessarily indicate a preference for renters without a handicap." **ER 4**. By finding this assumption "too tenuous," the district court centers its conclusion on the fact that not all people with disabilities have support animals, and while this is true, this reasoning is flawed. Just as not all people with disabilities use wheelchairs or other mobility aids, a policy that would not allow a renter to use a wheelchair in an apartment would certainly indicate an impermissible preference or limitation based on disability in violation of Section 3604(c). In this situation, the connection between wheelchair use and disability is not "too tenuous" and neither is the connection between support animals and disabilities. Though not all people with disabilities use a support dog, Brennan's policy suggests a discriminatory preference and limitation that would make his rental housing unavailable to an entire group of people with disabilities. No person with disabilities who requires a support dog of any kind could be accommodated—including those who are blind, hearing impaired, or live with any other physical or mental disability.

The district court even acknowledged that "[a] landlord's policy not to accept renters with dogs, 'even service dogs,' could reasonably suggest that persons with service dogs need not apply, therefore limiting any disabled person who depends on a service dog from securing that rental." **ER 10**. But the district court then made the mistaken assumption that Brennan's inquiry into Parsnip's weight could indicate to the ordinary reader that there was as possibility that he "would rent to someone with a dog, including a service dog" depending on the dog's size. **ER 4**. However, to violate Section 3604(c), Brennan's statement only needed to suggest a preference or limitation rather than a complete ban. Therefore, the district court erred in holding that the

possibility of renting to a person with a service dog based on the dog's weight meant that Brennan's statement did not indicate a preference or limitation.

Additionally, the district court overlooked the context in which the statement was made which suggests that an ordinary reader would interpret Brennan as having indicated a preference or limitation based on disability. Grant's explanation that Parsnip is "a verified emotional support animal" and that she could "provide references" would suggest to an ordinary reader that, when read in context, Brennan's statement expresses a preference against or limitation on tenants who rely on support dogs. *See Johnson*, No. 21-CV-01380-GPC-DEB, 2022 WL 104736, at *2 (holding that a landlord's no pet policy when "read in context, ignore[d] Plaintiff's documented medical condition and need for an accommodation").

As there is no binding precedent on this issue, the Court has discretion in reaching its conclusion, and while this Court could find that the district court's holding that a preference for renters without dogs, service dogs included, is a preference based on a dislike for dogs and not people with disabilities, I think that conclusion overlooks the context and intent behind Brennan's statements, the reasoning of a consensus of persuasive case law, and the inherent and inextricable connection between support animals and people with disabilities. Furthermore, affirming the district court's holding that Brennan's policy was not in violation of Section 3604(c) would be contrary to other express provisions of the FHA and have serious and negative policy implications. As Smith argues in her reply brief, the FHA "cannot be interpreted and applied in a manner that creates a gaping loophole for housing providers inclined to discriminate." **Gr. Br. 14**. It would also be contrary to the broader purpose of the FHA to find this statement permissible, as the FHA Declaration of Policy states, "[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United

States." 42 U.S.C. § 3601. Limiting the available housing for a renter with a disability who relies on an assistance animal is contrary to such purpose.

Accordingly, based on the context and intent of the statement, I recommend that this Court reverse the district court's finding and hold that Brennan violated Section 3604(c) of the FHA by indicating an impermissible preference or limitation based on disability under the ordinary reader standard.

D. Brennan Also Likely Violated the California Employment and Housing Act Claim

California also prohibits housing discrimination based on disability in the California Fair Employment and Housing Act. *Cal. Gov. Code* § 12955 et seq. Compared to the FHA, the FEHA provides "equivalent, if not greater protections" for victims of housing discrimination. *Pack*, 689 F. Supp. 2d at 1247; *see Cal. Gov. Code § 12955.6* ("Nothing in this part shall be construed to afford to the classes protected under this part, fewer rights or remedies than the federal *Fair Housing Amendments Act of 1988 (P.L. 100–430)* and its implementing regulations"). Because courts apply the same standards to FHA and FEHA claims," *Walker v. City of Lakewood*, 272 F.3d 1114, 1131 n. 8 (9th Cir. 2001), a reversal of the district court on the FHA claim would also be a reversal of the FEHA claim.

As discussed in the previous section, the district court likely erred in its judgment in favor of Brennan on Smith's FHA claim, and by extension the FEHA claim, and this Court should reverse.

E. Brennan Also Likely Breached a Duty of Care by Violating the FHA and FEHA

To prevail on a negligence claim in California, a plaintiff must show "a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury." *Jones v. Awad*, 252 Cal. Rptr. 3d 596, 602 (Ct. App. 2019) (quoting *Beacon*

Residential Cmty. Assn. v. Skidmore, Owings & Merrill LLP, 173 Cal. Rptr. 3d 752, 755 (Ct. App. 2014) (citation omitted)). Though it has not been addressed directly by this Court, district courts within this Circuit have held that a landlord's failure to comply with the FHA, and by extension the FEHA, constitutes a breach of duty not to discriminate in the rental of a dwelling. *S. Cal. Hous. Rts. Ctr. v. Los Feliz Towers Homeowners Ass'n*, 426 F. Supp. 2d 1061, 1069 (C.D. Cal. 2005). Here, because the district court likely erred in finding that Brennan's statement did not violate the FHA and FEHA, this Court should reverse on the negligence claim because Smith can show a breach of duty.

CONCLUSION

For the foregoing reasons, I recommend that we **REVERSE and REMAND** both the district court's grant of summary judgment of Smith's reasonable accommodation claim, and the district court's finding in favor of Brennan on the impermissible preference or limitation and negligence claims.

Applicant Details

First Name	**Zachary**
Middle Initial	**M.**
Last Name	**Griffith**
Citizenship Status	**U. S. Citizen**
Email Address	**eqx7nk@virginia.edu**
Address	**Address** Street **2400 Arlington Blvd., Apt. #13** City **Charlottesville** State/Territory **Virginia** Zip **22903** Country **United States**
Contact Phone Number	**4028007637**

Applicant Education

BA/BS From	**University of Nebraska-Omaha**
Date of BA/BS	**August 2015**
JD/LLB From	**University of Virginia School of Law** **http://www.law.virginia.edu**
Date of JD/LLB	**May 20, 2024**
Class Rank	**School does not rank**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**Yes**
Moot Court Name(s)	**William Minor Lile Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **No**
Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Boudouris, Kathryn
kboudouris@law.virginia.edu
434-924-2522
Marchand, Greg
gmarchand@usaid.gov
Sanchez, Camilo
csanchez@law.virginia.edu
(434) 924-7893

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Zachary M. Griffith

2400 Arlington Blvd. Apt. #13, Charlottesville, VA 22903 • (402) 800–7637 • eqx7nk@virginia.edu

June 10, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at the University of Virginia School of Law, and I am writing to apply for a clerkship in your chambers following my graduation in May of 2024.

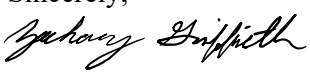
As shown in my enclosed resume and transcript, I have made it a priority during law school to partake in opportunities that advance my research and writing skills. This includes enrolling in practical skills-based courses such as the International Human Rights Clinic and Advanced Legal Research. In addition, I have supplemented that knowledge with multiple internships spanning various legal fields, including administrative law, securities regulations, foreign aid regulations, and criminal appellate matters. I believe these experiences will allow me to contribute meaningfully to your chambers.

Enclosed please find a copy of my resume, law school transcript, and a writing sample. You will also be receiving letters of recommendation from the following people:

> Professor Camilo Sánchez
> Director, International Human Rights Law Clinic
> 434-924-7304
>
> Ms. Kate Boudouris
> Research, Instruction, and Outreach Librarian
> 434-924-2522
>
> Mr. Greg Marchand
> Assistant General Counsel / Acquisition & Assistance
> U.S. Agency for International Development
> 202-215-3409

If you have any questions or need to contact me for any reason, please feel free to reach me at the above email address and telephone number. Thank you for your time and consideration.

Sincerely,



Zachary Griffith

Zachary M. Griffith

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EDUCATION

University of Virginia School of Law, Charlottesville, Virginia
J.D., Expected May 2024

- Program in Law and Public Service, Fellow
- Public Interest Law Association, Alternative Spring Break Finance Director
- William Minor Lile Moot Court Competition, Participant
- Pro Bono: Douglas County Attorney's Office; Legal Aid Justice Center; UVA Human Rights Clinic

University of Nebraska at Omaha, Omaha, Nebraska
B.S. in Business Administration (Accounting and Finance), *magna cum laude*, August 2015

- Susan Thompson Buffett Scholarship (merit-based full-tuition award)
- Study Abroad: Bendigo, Australia; Mumbai, India; and Istanbul, Turkey

EXPERIENCE

U.S. Department of State, Washington, D.C.
Legal Extern, Office of the Legal Adviser (L), Expected August 2023 – November 2023

U.S. Army, Fort Belvoir, Virginia
Legal Intern, Judge Advocate General's Corps, Government Appellate Division, June 2023 – Present

- Preparing appellate brief to be filed with the U.S. Army Court of Criminal Appeals

U.S. Agency for International Development, Washington, D.C.
Legal Intern, Office of the General Counsel, January 2023 – May 2023

- Researched and drafted legal memoranda related to U.S. foreign aid regulations
- Formulated bilateral agreement with foreign state

U.S. Securities and Exchange Commission, Washington, D.C.
Summer Scholars Program Intern, Office of the General Counsel, May 2022 – July 2022

- Reviewed rulemaking proposals and evaluated public comments
- Researched rulemaking authority granted to the Commission

Peace Corps, Silver Spring, Maryland and Okakarara, Namibia
Response Volunteer Coordinator, May 2021 – July 2021, Maryland

- Assisted Federal Emergency Management Agency in COVID-19 vaccine distribution efforts

Community Economic Development Volunteer, April 2018 – March 2020, Namibia

- Facilitated business skills and financial literacy trainings for unemployed youth (aged 18–35)
- Designed and implemented a leadership development program for a vocational training center's student representative council

AmpliFi, Omaha, Nebraska
Analyst, April 2020 – May 2021

- Built financial models and produced monthly reports for client executive management teams
- Provided *ad hoc* analysis reports for evolving business needs

Union Pacific Railroad, Omaha, Nebraska
Sales and Marketing Specialist, October 2017 – March 2018

- Managed construction products customers, totaling over $20 million in annual revenue

Senior Accounting Analyst, June 2017 – September 2017

- Authored and filed reports with the Securities and Exchange Commission (8-K, 10-Q, and 10-K)
- Prepared monthly consolidation procedures, budgets, and *ad hoc* analysis

Accounting Analyst, July 2015 – May 2017

PERSONAL

Interests: Golfing, hiking, experiencing new cultures, watching the NBA, and Notre Dame college football

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW

Name: Zachary Griffith

Date: June 06, 2023
Record ID: eqx7nk

This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.

Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.

		FALL 2021			
LAW	6000	Civil Procedure	4	A-	Mitchell,Paul Gregory
LAW	6002	Contracts	4	B+	Johnston,Jason S
LAW	6003	Criminal Law	3	B	Bonnie,Richard J
LAW	6004	Legal Research and Writing I	1	S	Buck,Donna Ruth
LAW	6007	Torts	4	B+	Armacost,Barbara Ellen
		SPRING 2022			
LAW	6001	Constitutional Law	4	B	Prakash,Saikrishna B
LAW	7009	Criminal Procedure Survey	4	B+	Harmon,Rachel A
LAW	7088	Law and Public Service	3	B+	Kim,Annie
LAW	6005	Lgl Research & Writing II (YR)	2	S	Buck,Donna Ruth
LAW	6006	Property	4	B	Hynes,Richard M
		FALL 2022			
LAW	6106	Federal Income Tax	4	A	Yale,Ethan
LAW	9254	Human Rghts Study Project (YR)	1	CR	Sanchez Leon,Nelson Camilo
LAW	9182	International Law/Use of Force	3	A-	Deeks,Ashley
LAW	7067	National Security Law	3	B+	Deeks,Ashley
LAW	7071	Professional Responsibility	3	B+	Mitchell,Paul Gregory
		SPRING 2023			
LAW	8000	Advanced Legal Research	2	A-	Boudouris,Kathryn Lee
LAW	9255	Human Rghts Study Project (YR)	2	A-	Sanchez Leon,Nelson Camilo
LAW	6107	International Law	3	B+	Deeks,Ashley
LAW	8617	Interntl Human Rights Clinic	4	H	Sanchez Leon,Nelson Camilo
LAW	9114	Law of Armed Conflict	3	B+	Bill,Brian

UNIVERSITY of VIRGINIA
SCHOOL of LAW

Kate Boudouris
Research, Instruction & Outreach Librarian

June 12, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am writing on behalf of Zachary Griffith, who has applied for a clerkship in your chambers. Zach was my student in Advanced Legal Research in the spring of 2023. He is a terrific researcher and an even better colleague, and I could not be more pleased to recommend him for a clerkship.

Zach consistently demonstrated excellent research, writing, and analytical skills in my class. Over the course of the semester, he completed a number of exercises designed to simulate real-world research problems, including four memos based on sources such as case law, statutes, and legislative history. Zach's memos were always concise and well organized, and his reasoning was grounded in thorough, highly relevant research. Zach's last two assignments of the semester were particularly strong. In one of them, he analyzed interconnected statutes and regulations to assess their implications for certain business activities. Zach performed exceptionally detailed research, enabling him to present more accurate, definitive conclusions than most of his classmates. He also exceeded my expectations by finding agency guidance documents that enhanced his recommendations. In another memo, Zach evaluated a novel legal claim, providing a thoughtful synthesis of relevant case law and a nuanced analysis of the facts. I feel confident that Zach's research and writing abilities will serve him well as a clerk.

In addition to having great legal skills, Zach handles every project with resourcefulness and common sense. When faced with a complex legal problem, he is adept at identifying the key issues, developing a research strategy, and refining that strategy as his work progresses. He also excels at proposing creative solutions to clients' problems. Zach's adaptability and sound judgment will be great assets as his career progresses.

On a personal level, I have been deeply impressed by Zach's positive attitude, intellectual curiosity, and commitment to improving his skills. Zach has completed several internships and externships during his time in law school, embracing opportunities to solve real-world problems and refine his legal research skills. In discussing these experiences with Zach, I have been struck by his genuine enthusiasm for the work and his dedication to providing excellent support

580 Massie Road, Charlottesville, VA 22903-1738 | **P** 434.924.2522 | **E** kboudouris@law.virginia.edu
www.law.virginia.edu

to his supervisors. I always enjoyed his visits to my office hours, where I found him to be friendly, curious, and engaging.

I am confident that Zach's legal skills, exceptional attitude, and good character will make him an outstanding clerk. If you have any questions, please do not hesitate to contact me.

Sincerely,

Kate Boudouris
Research, Instruction & Outreach Librarian

580 Massie Road, Charlottesville, VA 22903-1738 | **P** 434.924.2522 | **E** kboudouris@law.virginia.edu
www.law.virginia.edu

Dear Judge,

This letter is to recommend Zachary Griffith provide Zach with my strongest recommendation

I have over twenty years of experience as an Judge Advocate, federal experience with legis decade as a supervisor, and, early in my care Honorable Judge Andrew Effron of the Court of the Assistant General Counsel for Acquisition International Development (USAID). During my of attorneys and close to twenty legal intern required to research and apply the law to fac communicate to a variety of audiences.

After having worked almost five months with M the finest future lawyers I have had the plea observe and review his analytical ability and consistently exceeded my expectations for jun confronts a wide range of complex questions f repeatedly demonstrated the superior intellec to analyze and resolve these issues. His exa regulatory problems that we face on a daily b concise writings, made him an integral part o

For example, in his first exposure to our gov esoteric question involving the requirements contracts. He quickly and ably learned the r precedents from federal courts and administra in a memo that answered the question so well sharing system. He did this repeatedly, on s agreements with partner governments to litiga grants. In so doing, he became a sought-afte within our office.

U.S. Agency for International Development
1300 Pennsylvania Avenue, NW
Washington, DC 20523
www.usaid.gov

On a personal level, Mr. Griffith was an enjo
in-person or in a virtual environment. He ea
colleagues, and distinguished himself with hi
significant prior experience, including two i
him obvious wisdom and maturity far beyond th
would thrive in almost any environment. I wo
return to USAID, and it is difficult for me t
judicial clerkship.

If you have any questions, please add @ usaid.gov
(202) 281-9620.

Sincerely,

Gregory A. Marchand
Assistant General Couns